DECISIONS

OF THE

RAILROAD COMMISSION

OF THE

STATE OF CALIFORNIA

VOLUME I

JANUARY 1, 1911, TO DECEMBER 31, 1912.

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CALIFORNIA RAILROAD COMMISSION REPORTS.

DECISION NO. 24.

IN THE MATTER OF THE INVESTIGATION OF JOINT RATES SUBMITTED BY THE WESTERN PACIFIC RAILWAY COMPANY AND NEVADA-CALIFORNIA-OREGON RAILWAY IN PACIFIC FREIGHT TARIFF BUREAU JOINT FREIGHT TARIFF 44-A.

Case No. 118.

Decided May 10, 1911.

Respondents ask the approval of a newly adopted schedule of freight rates.

Held, That said schedule, taken as a whole, means large reductions; that the rates therein, as compared with other rates on lines long established, are not excessive; and that the Commission may not hold that the rates sought to be put in are more than compensatory.

Held, The Commission does not wish to be understood as holding that, by reason of the fact that a road has reduced its rates, shippers and consumers may not be accorded even lower rates, if the facts justify. Schedule established as submitted.

REPORT OF THE COMMISSION.

This investigation covers the joint rates submitted by the Western Pacific Railway Company and the Nevada-California-Oregon Railway in Pacific Freight Tariff Bureau Joint Freight Tariff 44-A. This tariff was submitted to the Commission for establishment February 10, 1911. In it many reductions in rates were proposed to and from all points on the Nevada-California-Oregon Railway, but to Alturas some advances in certain carload rates were proposed.

The Commission established this tariff, with the exception of the proposed increases, which it rejected, pending an inquiry as to their reasonableness.

The investigation of the Commission developed the fact that the benefits derived by the shippers, by reason of the reduction in rates proposed by this tariff largely exceeded the additional charges they will be required to pay on their carload rates on a few commodities. More than fifty per cent of all traffic affected by this tariff handled by the

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Western Pacific Railway moves in less than carload lots under the first, second, third, and fourth class rates.

Prior to the building of the Western Pacific Railway, the rates from San Francisco to Alturas were very much higher than at present. We submit herewith comparisons of class rates:

	1	2	3	4	5
(a) Prior to building of Western Pacific	225	225	225	225	218½
(b) On completion of Western Pacific Railway reduced to	180	164	147	127	108½
(c) Rates now proposed	157	136	125	107	95
	A	**B**	**C**	**D**	**E**
(a) Prior to building of Western Pacific	211	128	120½	96½	96½
(b) On completion of Western Pacific Railway reduced to	101	73	71	58	58
(c) Rates now proposed	95	80	75	61½	61½

The record in this case shows that, during the period the Western Pacific Railway was in operation in 1910, from May to December, there was shipped over that road to Alturas 1,806,228 pounds of less than carload merchandise under the first four classes. This tonnage, moving prior to the building of the Western Pacific, would have cost the shippers approximately $40,000. The actual charges collected, due to reduction in rates when the Western Pacific Railway commenced operation, were $27,634.73, a saving to the shippers of about $12,400. This new tariff proposes to reduce these rates so that a further saving on this same volume of traffic would amount to $4,302.91.

The carload traffic moving under five class rates during the period mentioned amounted to 212,557 pounds. At rates in effect prior to building of the Western Pacific Railway, the freight on this business would have been $4,635.31. The charges collected, however, due to reduction in rates after the Western Pacific commenced operations, was $2,297.53, a saving to the shippers of $2,337.78, and under the proposed tariff, the charges on this same volume of traffic will be further reduced by $408.93.

The advances in rates proposed by the carriers are almost entirely confined to commodity rates. A glance at the statement below will reveal the fact that, during the period from May to December, 1910, the Western Pacific Railway and the Nevada-California-Oregon Railway

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jointly handled to Alturas commodities on which the rates are proposed to be slightly increased, amounting to 1,400,181 pounds.

Commodity.	Weight.	Charge before Western Pacific was constructed.	Comparison with Western Pacific proposed schedule No. 44-A.		Comparison with Western Pacific present No. 44.	
			Charges.	Decrease as compared with charge before Western Pacific was built.	Old charges.	Decrease as before Western Pacific was built.
Agricultural implements	143,580	$2,368 41	$1,276 67	$1,091 74	$1,408 72	$959 69
Bags and baggage	24,970	561 80	233 42	328 38	187 22	374 58
Canned goods	205,302	3,387 48	2,155 68	1,231 80	1,950 38	1,437 10
Chocolate	1,733	39 00	23 32	15 68	24 25	14 75
Crackers	31,908	717 93	431 40	286 53	430 89	287 04
Explosives	199	9 00	4 00	5 00	3 46	5 54
Extract	3,853	86 69	60 26	26 43	59 40	27 29
Flour	41,285	335 45	334 40	1 05	309 64	25 81
Leather	7,602	171 05	115 90	55 15	102 35	68 70
Mineral water	170	3 83	2 12	1 71	1 87	1 96
Olive oil	1,379	31 03	21 65	9 38	23 51	7 52
Salt	62,960	458 03	387 20	70 83	362 02	96 01
Seed	33,996	730 90	424 95	305 95	311 06	419 84
Sugar	423,384	6,985 84	3,658 62	3,327 22	3,251 63	3,634 21
Syrup	65,474	1,080 32	556 53	523 79	491 01	589 31
Tea	7,041	158 42	110 54	47 88	119 75	38 67
Wire nails	250,140	4,127 31	2,337 88	1,789 43	2,139 82	1,987 49
Wool	95,206	1,261 49	1,190 07	71 42	1,213 86	47 63
Totals	1,400,181	$22,513 98	$13,324 61	$9,189 37	$12,390 84	$10,123 14

The freight charges on this traffic prior to the construction of the Western Pacific Railway, at the rates that were then in effect, would have been $22,513.98. The actual charges collected, however, due to the reduction in rates after the Western Pacific began operation, was $12,390.84, or a reduction of $10,124.14.

It is now proposed to increase these rates and the total increase on these commodities for the same period will amount to $933.77. Comparing the rates in effect prior to the construction of the Western Pacific, it will be seen that the proposed rates on these commodities result in a decrease in the charges of $9,189.37.

Viewing this entire situation, it appears that the volume of traffic handled by the Western Pacific and Nevada-California-Oregon Railway during the period mentioned on both class and commodity rates resulted in a saving to the shippers of approximately $44,860 over what would have been collected had the traffic moved at the rates in effect over the Southern Pacific and Nevada-California-Oregon Railway by way of Reno, Nevada.

It seems safe to say that, since the Western Pacific began operations and the reduced rates became effective via that line, as well as via the Southern Pacific, the saving to the shippers of Alturas has been at least $100,000 per annum.

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The Commission does not wish to be understood as holding that, by reason of the fact that a road has reduced its rates, shippers and consumers may not be accorded even lower rates, if the facts justify, but we are merely pointing out the fact that, by reason of the voluntary act of the carriers in this instance, the section involved has been greatly benefited, and the Commission is not in position to gainsay the assertion of the representatives of the Western Pacific Company that, by reason of the fact that their road is newly constructed, traversing an undeveloped country, the rates on the volume of business handled by them do not yield a fair return upon the investment.

The question raised by counsel for the Alturas shippers, as to whether or not a locality should be burdened with paying excessive rates on railroads built to a section from which the possible traffic would not yield a return on the investment, is not here in question, because of the fact that, as has been pointed out herein, the extension of the Western Pacific to this territory has served to lessen the burden which was theretofore upon the shipper and consumer of Alturas and vicinity.

We are not unmindful of the fact that the reductions in the tariff proposed are to a great extent forced by reason of the Interstate Commerce order reducing rates by way of the Southern Pacific to Nevada points, and we are not inclined, under ordinary circumstances, to permit a carrier to recoup losses in revenue occasioned by a reduction on one class of freight by increases on other classes; nor do we feel that this decision brings about such a result or would be precedent for such a practice. The slight increases in this tariff are brought about by the following facts:

Ordinarily, rates to such points as Alturas would be made up of the lowest combination of locals, of the Western Pacific to Liegan plus the local rates of the Nevada-California-Oregon thence to Alturas. Freight teams, however, began operation from Gerlach, which is a station on the main line of the Western Pacific Railway easterly from the junction of the Nevada-California-Oregon Railway with the Western Pacific, to Surprise Valley points, and to protect their business and to insure the movement of traffic, not from Gerlach by teams to Surprise Valley points, but by way of its line from Liegan to Alturas, the Nevada-California-Oregon Railway insists that the rates to Alturas shall not be greater than thirty cents per hundred higher than the Gerlach rate, in order, as has been said, that their company may haul the Surprise Valley freight to Alturas, to be teamed thence to Surprise Valley, instead of permitting the entire tonnage to move by way of team from Gerlach, as no doubt the Western Pacific would much prefer. In this way, the Alturas shippers receive the benefit of an arbitrary rate from Liegan to Alturas which is very much lower than the local rate of the

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Nevada-California-Oregon Railway, and are thus benefited by the competition for the Surprise Valley business.

Concerning the route over which the freight may be transported, this Commission is not interested, so long as the shippers and consumers are accorded the lowest possible rate consistent with a reasonable return to the carrier on its investment, but this matter has been considered somewhat in detail in order that the fact may be patent to the people of Alturas that the conditions sought to be imposed really result in a double benefit to that section; first, an actual reduction in their freight charges when all classes are considered, and second, a deflection of a greater part of the business through the city of Alturas consigned to points beyond.

Pending an inquiry as to the actual value of the property of the various carriers and the volume of business, it is impossible for this or any other commission finally to determine the main question as to the reasonableness of any rate. The method heretofore in vogue has been that of comparison, but, of course, no comparison can shed any light upon the reasonableness of the rate compared, unless the reasonableness of the rate with which it is compared is known. Thus it is idle to say that a certain rate for a given commodity over a given distance is high or low, because of the fact that it is higher or lower than the rate for a similar commodity over a similar distance and haul in effect elsewhere, unless the rate to which it is compared is known to be a reasonable rate. Therefore, rates must for the time being be made practically in the dark, except for such light as unsatisfactory comparisons will afford.

The Western Pacific, as has already been pointed out, urges that its rates are not compensatory, and in support of this fact, submits numerous comparisons with other rates in effect on other lines, and also calls attention to the fact that its line, being a new one, traverses a practically undeveloped section. We here insert some of the comparisons submitted:

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COMPARISON OF RATES.

From—	To—	Distance in miles.	Via—	Character of service.	Rates in cents per 100 pounds.													
					Classes.										Commodities, carloads.			
					1	2	3	4	5	A	B	C	D	E	Agricultural implements.	Cannel goods	Sugar	Syrup
San Francisco, Cal. Agent Gomph's. C.R.C.	Alturas, Cal. No. 45.	491.1	W.P., Liegan & N.-C.-O.	Two line haul	A	157	136	125	107	95	95	80	75	61½	61½	95	95	85	85
San Francisco, Cal. Agent Gomph's. C.R.C.	Goldfield, Nev. No. 35.	514.5	S.P., Mina & T. & G.	Two line haul	B	250	225	208	179	154	146	99	92	73	69	146	154	154	154
Los Angeles, Cal. Agent Gomph's. C.R.C.	Goldfield, Nev. No. 35.	530.9	S.P., L.A. & S.L., Las Vegas & L.V. & T.	Two line haul	B	250	225	208	179	154	146	99	92	73	69	146	154	154	154
Pueblo, Col. D. & R.G. I.C.C. No.	Telluride, Col. 2249.	302.8	D.& R.G., Montrose & R.G.S.	Two line haul	A	215	200	165	130	107	107	85	75	47	47	107	107	107	107
Stockton, Cal. Agent Gomph's. C.R.C.	Alturas, Cal. No. 45.	397.4	W.P., Liegan & N.-C.-O.	Two line haul	A	155	136	123	106	94½	94½	79	72	59½	59½	94½	94½	85	85
Stockton, Cal. Agent Gomph's. C.R.C.	Blair Junct., Nev. No. 35.	403.9	S.P., Mina & T. & G.	Two line haul	B	220	195	178	152	136	126	87	80	69	65	136	136	136	136
Los Angeles, Cal. Agent Gomph's. C.R.C.	Jacksonville, Nev. No. 35.	388	A.T. & S.F., Ludlow & T. T. Ry.	Two line haul	B	250	225	208	179	154	139	99	92	73	69	139	154	154	154
Pueblo, Col. D. & R.G. I.C.C. No.	Telluride, Col. 2249.	302.8	D.& R.G., Montrose & R.G.S.	Two line haul	A	215	200	165	130	107	107	85	75	47	47	107	107	107	107
Stockton, Cal. S. P. C.R.C. Nos. 134	Klamath Falls, Or. and 720.	387.6	S.P.	One line haul	B	176	161	146	134	123	123	86½	68	62½	62½	123	123	110	123

A—Standard and narrow gauge, involving expense of transfer from standard gauge to narrow gauge cars or vice versa.
B—Both carriers standard gauge, consequently no transfer cost to be taken care of by carriers out of joint rate.

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COMPARISON OF RATES.

From—	To—	Distance in miles.	Via—	Character of service.	Rates in cents per 100 pounds. Classes. 1	2	3	4	5	A	B	C	D	E	Commodities, carloads. Agricultural implements.	Canned goods.	Sugar.	Syrup.
Sacramento, Cal.	Alturas, Cal.	338.1	W.P., Liegan & N.-C.-O.	Two line haul	145	126	116	99	87½	87½	73	68	55½	55½	87½	87½	85	85
Agent Gomph's. C.R.C.	No. 45.																	
Ogden, Utah	East Ely, Nev.	277.8	S.P., Cobre & N.N.	Two line haul	152	136	120	109	98	94	71	67	58	53	94	82	87	82
Oregon Short Line I.C.	C. No. 1706.																	
Pueblo, Col.	Telluride, Col.	302.8	D.& R.G., Montrose & R.G.S.	Two line haul	215	200	165	130	107	107	85	75	47	47	107	107	107	107
D. & R.G. I.C.C. No.	2249.																	
Los Angeles, Cal.	Leeland, Nev.	339	A.T. & S.F., Ludlow & T. & T. Ry.	Two line haul	241	217	189	166	140	126	92	84	69	63	126	140	140	140
Agent Gomph's. C.R.C.	No. 35.																	
Marysville, Cal.	Alturas, Cal.	312	W.P., Liegan & N.-C.-O.	Two line haul	145	126	116	99	87½	87½	73	68	55½	55½	87½	87½	85	85
Agent Gomph's. C.R.C.	No. 45.																	
Los Angeles, Cal.	Death Valley Jct., Cal.	316	A.T. & S.F., Ludlow & T. & T. Ry.	Two line haul	216	194	169	149	125	114	82	75	62	56	114	125	125	125
Agent Gomph's. C.R.C.	No. 35.																	
Pueblo, Col	Telluride, Col.	302.8	D.& R.G., Montrose & R.G.S.	Two line haul	215	200	165	130	107	107	85	75	47	47	107	107	107	107
D. & R.G. I.C.C. No.	2249.																	
Marysville, Cal.	Klamath Falls, Or.	293.3	S.P.	Two line haul	215	200	165	130	107	107	85	75	47	47	107	107	107	107
S. P. C.R.C. Nos. 134	and 720.			One line haul	155	141	128	117	110	110	72½	56½	52	52	110	110	110	110
Oroville, Cal.	Alturas, Cal.	296	W.P., Liegan & N.-C.-O.	Two line haul	145	126	116	99	87½	87½	73	68	55½	55½	87½	87½	85	85
Agent Gomph's. C.R.C.	No. 45.																	
Los Angeles, Cal.	Death Valley Jct., Cal.	316	A.T. & S.F., Ludlow & T. & T. Ry.	Two line haul	216	194	169	149	125	114	82	75	62	56	114	125	125	125
Agent Gomph's. C.R.C.	No. 35.																	
Pueblo, Col.	Telluride, Col.	302.8	D.& R.G., Montrose & R.G.S.	Two line haul	215	200	165	130	107	107	85	75	47	47	107	107	107	107
D. & R.G. I.C.C. No.	2249.																	
Marysville, Cal.	Klamath Falls, Or.	293.3	S.P.	Two line haul	215	200	165	130	107	107	85	75	47	47	107	107	107	107
S. P. C.R.C. Nos. 134	and 720.			One line haul	155	141	128	117	110	110	72½	56½	52	52	110	110	110	110

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While not agreeing that these comparisons are in all respects fair ones, yet they reasonably illustrate the fact that, even in those comparatively few instances where the Western Pacific desires to increase its rates, it at least is not asking more than other roads ask for a similar service, and until we are in a position to say that the other roads are charging too much, or we have considered the value of the property of the Western Pacific and its total traffic, we can not go behind these figures.

Taking into consideration, therefore, the fact that the schedule which we are asked to establish, taken as a whole, means large reductions, and that the rates therein, as compared with other rates on lines long established, are not excessive, this Commission is not in a position to hold that the rates sought to be put in are more than compensatory, and therefore orders the schedule established, to become effective five (5) days after filing tariff with the Commission.

Dated May 10, 1911.

DECISION NO. 25.

M. S. CURRIER
vs.
WELLS FARGO & COMPANY.

Case No. 121.

Decided May 10, 1911.

Complaint alleges unjust discrimination, in that respondent refused to receive a certain commodity for shipment and had tampered with a certain shipment. *Held*, That the allegations of the complaint are not sustained by the evidence.

REPORT OF THE COMMISSION.

The complaint in this case alleges that the defendant, Wells Fargo & Company, through its agent at Oceano, California, has discriminated against the plaintiff and in favor of the Oceano Clam Company, his rival in business. It is further set out that this discrimination is effected by means of a refusal on the part of said agent of Wells Fargo & Company to receive shipments of clams tendered by the plaintiff, and also said agent is charged with having tampered with the plaintiff's shipment and having substituted for the clams tendered by plaintiff others of a different grade. The defendant has denied in detail each and every material allegation of the complaint.

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The gist of this action is discrimination, and by reason of the fact that discrimination is a serious offense under the constitution and statutes of this State, this Commission, regardless of the fact that the amount involved in this case is small, deemed it necessary to make a careful investigation of the charges set out in the complaint, and to this end ordered a hearing at San Luis Obispo.

We find no evidence sufficient to sustain the charge of discrimination and find as a fact that no such discrimination was practiced by the defendant. The entire case presented by plaintiff is based upon suspicion not amounting to positive proof. In this connection the Commission desires to voice its disapproval of any practice on the part of litigants which will cause the useless expenditure of a considerable amount of time in the consideration of a matter which is either not meritorious or concerning which only suspicion and not evidence is ready for presentation when the case is set for trial. While we stand always ready, even though the matter involved, as in this case, from a monetary standpoint, is small, to give all the time necessary to a thorough investigation of the complaint of the smallest litigant, yet it is incumbent upon this litigant to assist the Commission in arriving at the facts and not appear for trial without any preparation.

It appears from the evidence that the plaintiff was engaged in digging and shipping clams from Oceano and also Arroyo Grande in San Luis Obispo County. That he catered particularly to the trade which desires clams of very small size. The other clam diggers in this vicinity do not dig the smaller clams which ordinarily are found near the shore, but only the larger ones that are secured by digging farther out. The general sentiment of the people of the vicinity appears to be antagonistic to the taking of these small clams, by reason of the fact that such practice tends to destroy the beds. Considerable feeling no doubt existed between the plaintiff and the proprietor of his rival, the Oceano Clam Company, which led to an intervention by the district attorney of San Luis Obispo County, who served a notice upon plaintiff to the effect that the taking of the smaller clams was illegal. The basis for the charge of discrimination against the agent at Oceano no doubt was the fact that he notified plaintiff that he would not accept for shipment these smaller clams, after the notification of the district attorney that the taking of such clams was illegal. The subsequent conclusion by the plaintiff that he had a legal right to take the smaller clams no doubt led him to believe that the district attorney, his rival in business, and the Wells Fargo agent were in league against him to drive him out of business. The Commission is of the opinion that such was not the case.

During the course of this investigation the existence of some practices of the defendant was disclosed, not necessarily bearing upon the

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question of discrimination but to which, nevertheless, we desire to draw attention. It appears from the evidence that a certain shipment made by the plaintiff was, through the mistake of Wells Fargo & Company's agent, delivered to one other than the consignee thereof, and, regardless of the fact that the plaintiff was no wise in fault, yet he was required to seek his reparation from the man who received the shipment, and Wells Fargo & Company did not assume the responsibility of reimbursing him. It does not make less pernicious the practice in this particular case that the man who received the shipment promptly paid the plaintiff therefor, and this Commission desires to call the attention of Wells Fargo & Company to the fact that in such cases shippers must not be put to the trouble of seeking their reparation from the person who receives the shipment, but that it is the duty of the carrier to immediately rectify its mistake and compensate the shipper for whatever loss he may have sustained.

A second practice disclosed is that of selling goods for express charges without notification to the consignor, and, as appears from the evidence in this case, in some instances with perfectly definite instructions from the consignor as the method of procedure if the consignment can not be delivered to the person to whom it is originally consigned. We can find no justification for such action on the part of the defendant.

Another practice, adhered to with seemingly more justification, is that of allowing the initial agent to put a weight upon the shipment, upon which weight the shipper expects to pay his express charges, and then permitting the agent at destination to find a different weight with a corresponding different charge. We desire to call attention to the fact that this practice might readily be used as a means of discrimination, and that if the initial agent does not properly weigh the consignment, that he, and not the shipper, should be responsible for the difference between the charges assessed by him and the charges that should have been assessed. In the case under consideration it appears that the agent at Oceano received and billed the clams of plaintiff at one hundred pounds per sack, while in some instances the agent at destination weighed the shipment and made an additional charge to cover an alleged difference between the weight decided upon by the agent at Oceano and the actual weight as found by such agent at destination. Under this practice, the shipper has no way of verifying the correctness of the weight, and as to such shipments as are not checked by the agent at destination, the charge would be less than for shipments so checked. An understanding between two agents of Wells Fargo & Company could easily result in a large discrimination in the favor of one shipper or against another, as is alleged in the complaint in this case. Such discrimination in this instance is not proved, but the practice is not commendable and should be discontinued.

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After a careful consideration of all the facts, the Commission finds that the allegations of the complaint are not sustained by the evidence, and the complaint is ordered dismissed.

Dated May 10, 1911.

DECISION No. 26.

STEIGER TERRA COTTA AND POTTERY WORKS
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 120.

Decided May 11, 1911.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The complainant in the action entitled as above having heretofore filed with this Commission its written direction to dismiss said action,

It is hereby ordered that said action be and the same is hereby dismissed.

Dated San Francisco, May 11, 1911.

DECISION No. 27.

GEORGE A. LEGG
vs.
NEVADA COUNTY NARROW GAUGE RAILROAD COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY.

Case No. 117.

Decided June 15, 1911.

Complaint asks the Commission to abolish a transfer charge of 15 cents per ton assessed on joint traffic moving over the lines of respondent and to permit an advance in rates to points on the Nevada County Narrow Gauge Railroad.

Held, That the transfer charge on less carload freight should be eliminated and a transfer charge allowed on carload freight, and that the cost of transferring less carload freight should be borne by the two companies.

Held, That before the Commission should permit an advance in rates, it must appear that such an advance is necessary, in order to earn a reasonable profit from the amount invested in the property.

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Held, That the determination on this point involves consideration as to whether the public should be called upon to pay rates high enough to permit the retirement of the funded debt. The public should not be called upon to provide the money for new construction and permanent improvements. If the stockholders wish to invest their money in new construction, the public might be reasonably asked to pay fair returns on the additional capital thus invested, but it is absurd to ask the public to furnish both principal and interest through the medium of excessive rates.

Ordered, That the present tariff rates must be maintained pending submission for approval of a new schedule of class rates which will not result in increased charges to the shipper.

Ordered, That respondents present for approval a revised tariff providing for the elimination of transfer charges at Colfax on less than carload shipments.

REPORT OF THE COMMISSION.

The complainant in this action seeks to have this Commission abolish a transfer charge of 15 cents per ton now assessed on joint traffic moving over the lines of the defendant carriers, which transfer charges appear in Item No. 3, Pacific Freight Tariff Bureau Joint and Proportional Tariff No. 55, effective September 20, 1910.

February 9th the defendant carriers filed with the Commission, through the Pacific Freight Tariff Bureau as agents, Supplement No. 3 to this tariff, which had the effect of cancelling privilege of shipping freight in lots aggregating one ton or more, classified at any or all of the classes—fourth class and higher—at flat rates per ton and substituting therefor a provision which required that shipments to enjoy these rates must consist of at least one ton of each article rated fourth class and higher. This supplement the Commission suspended, pending an investigation as to the reasonableness of the provisions therein contained, inasmuch as its provisions constituted an increase in freight rates for those shipments heretofore shipped in mixed ton lots of all of the classes rated fourth class and higher. The complainant in this action protested against this Supplement No. 3 to Pacific Freight Tariff Bureau Joint and Proportional Tariff No. 55 becoming effective, and the Commission received numerous complaints from other receivers of freight asking that permission to establish proposed changes be denied the carriers, alleging that the proposed changes would work a great hardship on them, particularly those located in the mountain districts of Nevada and Sierra counties east of Nevada City and Grass Valley.

The Commission, on investigating this matter, finds that for many years the Nevada County Narrow Gauge Railroad and the Southern Pacific Company maintained joint tariffs in connection with team lines, which tariffs quoted freight rates from San Francisco, Sacramento, Marysville and other intermediate points to the mountain towns and districts of Sierra and Nevada counties, and that these rates were divided so that the carriers received for their rail haul to Nevada City

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or Grass Valley a proportion very much lower than charges for freight to Nevada City and Grass Valley proper.

The Commission also finds that the carriers later canceled these joint freight rates to these mountain districts in connection with the teams, and in lieu thereof published proportional rates to Nevada City and Grass Valley on traffic destined to these districts which were very much lower for freight in lots of one ton than they charged to Nevada City and Grass Valley proper.

The former tariffs issued in connection with freight teams to these mountain districts did not require the shipping of any specified amount, but quoted rates on "merchandise, including powder, giant caps and high explosives," at so much per ton, which permitted the shipper to transport any amount, no matter how small, and take advantage of these rates. These tariffs were canceled September 25, 1909, by the proportional tariffs naming rates to Nevada City and Grass Valley only, and further restricting the application of these rates to lots of not less than one ton of merchandise.

The records of the Commission show that early in 1910 complaints were made by receivers of freight in Nevada City and Grass Valley, that the naming of lower rates to Nevada City and Grass Valley on business destined to the mountain towns than were given the receivers of freight at Nevada City and Grass Valley proper constituted an unjust discrimination in favor of the receivers of freight in the mountain districts. The records show that Commissioner Loveland, after investigation, came to an understanding with the Southern Pacific officials that they would remove this discrimination by extending the privilege of shipping freight in ton lots at these ton rates to shipments destined Nevada City and Grass Valley proper, and to make the charge uniform, regardless of the final destination. This had the effect of increasing the charges for freight shipped in ton lots from $6.00 to $9.00 per ton from San Francisco to Nevada City when destined to Sierra City, Alleghany, Downieville, Mountain House, and Camptonville, and several other places; from $7.00 to $9.00 per ton on freight shipped from San Francisco to Nevada City and Grass Valley destined Cherokee, French Corral, San Juan, and Columbia Hill.

Inasmuch as the proportional charge was $9.00 per ton on freight destined to North Bloomfield, Gaston and several other points, this change in tariff had no effect on the business for those points. At the same time this change had the effect of extending to Grass Valley and Nevada City the privilege of shipping freight in ton lots from San Francisco at $9.00 per ton, when destined to those towns proper.

Similar tariff changes were made at the same time, covering shipments from Sacramento, Marysville and other points to Nevada City

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and Grass Valley, as well as the mountain districts, which removed the discrimination complained of. These changes were made and the discriminations removed September 20, 1910, and the carriers on February 9th, as before stated, presented Supplement No. 3 to Pacific Freight Tariff Bureau Joint and Proportional Tariff No. 55, which changed the wording of this section of the tariff so as to limit the shipments to one ton of each article of each class, claiming that in compiling the original tariff an error had crept in and that it had been the intention of the carriers from the start to limit these shipments to lots of one ton of each article of each class.

Inasmuch as carriers had for many years carried a provision in their tariffs for the application of ton rates on all kinds of mixed merchandise, regardless of classification, in lots of less than one ton and had subsequently canceled this, limiting the application of these rates to lots of one or more of all classes, the Commission deemed it necessary before granting permission to make a further change and place further restrictions on shipments taking these ton rates, which would have the effect of materially increasing the charges—particularly to the small shipper—to order a thorough investigation, in order that they might determine the reasonableness of these proposed increases. Accordingly, the carriers were called upon to furnish information as to tonnage moving under tariffs in effect at the time these ton rates applied only to Nevada City and Grass Valley, when destined to mountain districts, and the revenue derived therefrom, as well as statements of tonnage and revenue covering the period when these ton rates were in force to Nevada City and Grass Valley proper, as well as on business destined to the mountain districts.

According to figures submitted by the Nevada County Narrow Gauge Railroad, the average rate per ton for all business handled to Nevada City from July 1, 1909, to June 30, 1910, which included freight for the mountain towns, was $3.31 per ton, while from October 1, 1910, to January 30, 1911, during which time these ton rates were extended in application to Nevada City proper, as well as to the mountain towns, the average rate was $3.48 per ton—an increase in the average rate of 17 cents per ton. During the year—July 1, 1909, to June 30, 1910—the total merchandise handled to Nevada City proper, not including that for mountain districts, was 2,806 tons—gross revenue $11,249—an average rate of $4.01 per ton. During the same period less than carload merchandise was handled to Nevada City, destined to the mountain points, amounting to 1,495 tons—revenue $2,989, or an average rate of $2.00 per ton. (Tables Nos. 1 and 2.)

By comparing these figures with the average rate per ton received by the Nevada County Narrow Gauge Railroad on this same class of busi-

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ness from October 1, 1910, to January 31, 1911, which amounted to $3.48 per ton, it will be seen that, while this company would lose an average of 53 cents per ton on all less than carload merchandise going to Nevada City proper, it would receive the benefit of an increase of $1.48 per ton on all merchandise destined to the mountain districts, which, on the whole, results in increased revenue to the Nevada County Narrow Gauge Railroad, one third of the less than carload merchandise being destined mountain towns and two thirds Nevada City proper.

According to statistics furnished by the Nevada County Narrow Gauge Railroad, that road handled to Grass Valley, July 1, 1909, to June 30, 1910, from the Southern Pacific, 3,495 tons of less than carload merchandise at an average rate of $3.23 per ton for that line. Of this amount 3,363 tons was for Grass Valley proper, at rate of $3.33 per ton, and 132 tons for mountain districts, at an average rate of $1.57 per ton. (Tables Nos. 1 and 2.)

During the period, October 1, 1910, to January 31, 1911, during which time the rates were the same to Grass Valley, regardless of destination, the Nevada County Narrow Gauge Railroad handled 1,174 tons, at an average rate of $3.21 per ton, or two cents per ton less than all less than carload Grass Valley traffic for the fiscal year 1909–1910.

The situation differs as between Grass Valley and Nevada City for the reason that 95 per cent of the teaming to mountain districts is done from Nevada City, and, while there is a loss of two cents per ton to the Nevada County Narrow Gauge Railroad on Grass Valley less than carload business, there is a net increase of 17 cents per ton on the Nevada City less than carload business, due to the fact that on 2,806 tons to Nevada City proper the Nevada County Narrow Gauge rate was reduced from $4.01 per ton to $3.48 per ton, but on the mountain freight of 1,495 tons the average rate was increased from $2.00 per ton to $3.48 per ton.

At the hearing of this case, witness for the defendant Nevada County Narrow Gauge Railroad testified that to maintain the rates now in effect would result in serious loss of revenue to their company. The witness was unable to explain, however, how this loss in revenue could be possible when, by the statement furnished by his company, it is apparent it is receiving a greater rate per ton on this class of freight than during the previous year. The witness contended that it was not fair to compare the months of October, November, December and January with those of the entire previous year before the ton rates became applicable to Nevada City and Grass Valley proper, stating that the greater part of the mountain tonnage moved during the summer months.

According to the figures furnished by the Southern Pacific Company,

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covering the period from October 1, 1909, to January 31, 1910, the two companies jointly handled less than carload merchandise to Nevada City, including merchandise destined to the mountain districts, which took a lower rate than Nevada City proper, amounting to 1,163 tons—revenue $10,927.43, an average rate of $9.40 per ton for the joint movement, and during the same months of 1910 and 1911, these carriers handled 1,128 tons, revenue $10,697.40, or an average rate of $9.48—an increase of 8 cents per ton over the same period during the time when the rates were higher to Nevada City proper than to the mountain towns. (Table No. 7.)

It is the opinion of this Commission that before it should permit an advance in rates, it must appear that such an advance is necessary, in order to earn a reasonable profit on the amount invested in the property, and from a comparison of the revenue received and the average rates per ton between the periods, during which time the rates were lower to Nevada City and Grass Valley when destined to the mountain districts than to these points proper, and the time when the rates were all placed on an equal footing, it will be seen that no substantial loss in revenue is likely to occur.

The question is then: Are the rates sufficient to earn the carriers a reasonable return on their investment?

The defendant Southern Pacific Company offered no testimony in this connection, but the Nevada County Narrow Gauge produced a witness who testified that should the Commission abolish the transfer charge of 15 cents per ton and decline to permit the advance in rates to points on the Nevada County Narrow Gauge Railroad, it would cause a loss of approximately $9,000 per annum to his company.

Regarding transfer charges which complainant alleges are unreasonable—

We will first consider the transfer charges on less than carload traffic. This class of traffic is universally loaded and unloaded by carriers, the shippers delivering it on the station platform and the consignee receiving it on the delivery platform.

If the less than carload freight was destined to Colfax locally, the Southern Pacific Company would unload it and truck it into the warehouse, and if it originated at Colfax, the Nevada County Narrow Gauge Railroad would truck it from the depot into the cars.

As both of these carriers use the same depot, each line is required to perform no more service in this transfer of less than carload traffic than it would on local traffic to and from the transfer point.

As the defendant carriers for a great many years made no transfer charge on less than carload merchandise, when destined to mountain districts, there appears to be no good reason for adding this charge on

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Nevada City and Grass Valley business proper, as well as that destined to mountain districts simply because the rates for ton lots of merchandise were extended so as to apply to Nevada City and Grass Valley, regardless of whether for local merchants or destined to mountain points.

On carload traffic, however, a different question is involved. The carriers seldom, if ever, load or unload carload lots, that requirement being made of shipper and consignee. Therefore, the transfer from one car to another, due to different gauges of railroads, represents an expenditure for which carriers are entitled to charge, unless the carload rates are sufficiently high to cover these charges.

Carload rates having been usually constructed on the theory of a through movement without the carriers being required to load or unload the freight, it would seem proper that the traffic should properly bear the cost of transferring en route, except in such cases where the transfer is made for the convenience of the carrier.

It would seem from the records that the Nevada County Narrow Gauge Railroad pays practically all of this transfer charge. For instance, according to statistics furnished by the Nevada County Narrow Gauge Railroad, the total receipts for transferring freight in 1910 were $5,429.40 and the cost of performing this service was $5,519.70.

A contract exists between the two lines calling for the payment of $6,159.48 per annum by the Nevada County Narrow Gauge Railroad to the Southern Pacific Company for transferring freight and furnishing joint station agent and facilities, and in addition thereto the Nevada County Narrow Guage Railroad pays half the cost of repairs and maintenance of joint facilities. The auditor of the Nevada County Narrow Gauge Railroad states that his company charges to this amount $900 per annum for the station agent's services at Colfax and the balance—$5,259.48—is charged against transferring freight, which would indicate that almost the entire cost of transfer is borne by the Nevada County Narrow Gauge Railroad.

However, what disposition is made of the amount collected for transfer charges is not known to the Commission, and it may be that the transfer charges collected by the Nevada County Narrow Gauge Railroad are retained by that company to offset the amount paid by the Southern Pacific Company for performing the service.

As before stated, we believe the transfer charge on less carload freight should be eliminated, and a transfer charge should be allowed on carload freight, and that the cost of transferring less carload freight should be borne by the two companies.

The question then arises: Are the carriers in need of increased revenue in order to meet their operating and fixed charges and pay a

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reasonable profit on the investment? The Southern Pacific Company offered no testimony in this connection, and the Nevada County Narrow Gauge Railroad witness declared that such increases were necessary to meet fixed charges, retire bonds, etc., in accordance with trust deed.

The property of this company in 1900 had a funded debt of $250,000 and stock outstanding amounting to par value of $250,200.

The bonded indebtedness has been reduced from earnings of property to $189,000 in 1910, or $61,000 less than in 1900. The interest charges have been reduced from $17,360 per annum to $13,580. (Table No. 8.)

According to the reports on file with the Commission, there has been invested in the property, since 1900, $163,941.46 from the earnings and there has likewise been paid in dividends to stockholders $81,315, or an average annual dividend of about 3¼ per cent.

To summarize: The above figures show payments from earnings:

TABLE NO. 8.

$61,000 00	For refunding bonds.
163,941 46	For new construction, betterments, etc.
81,315 00—3¼%	Dividends.
173,509 80—7%	Interest paid on bonded indebtedness.
$479,766 26	

The next question is: Should the public be called upon to pay for transportation rates high enough to permit the retirement of a funded debt? Or, is it the stockholders whose stock increases in value as the funded debt decreases, who should forego their dividends if the bonds must be retired?

We do not believe the public should be called upon to pay excessive rates so that bond issues can be retired from earnings of a road. The stockholders are the beneficiaries as bonds are retired, and if bonds must be retired before the stockholders are prepared to do so, they, not the public, should pay for the mistake in financing.

In addition, this company has paid from its earnings $163,941.46 in ten years for new construction, betterments, improvements, etc. How far can it be expected the public should go toward paying for such items? With the expenditure of each amount, the value of property increases, the assets of the stockholders and bondholders increase without further investment on their part.

Railroads should make due allowance for depreciation and should be permitted to accumulate sufficient surplus to renew facilities worn out in service, but the public should not be called upon to provide the money for new construction and permanent improvements.

If the stockholders wish to invest their money in new construction, and the like, the public might be reasonably asked to pay fair returns on the additional capital thus invested, but we believe it is absurd to

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ask the public to furnish both principal and interest, through the medium of excessive rates. Some of these improvements are designed to do service for all time and the shippers and traveling public of to-day should not be burdened to provide facilities for future generations.

The Supreme Court of the United States, in the case of the *Illinois Central Railroad* vs. *Interstate Commerce Commission*, 206 U. S. 441–462, in this connection says:

> "The findings show that the old rates were profitable and that dividends were declared even when permanent improvements and equipment were charged to operating expenses. But may they be so charged? Appellants contend that the answer should be so obviously in the affirmative that it should be made an axiom in transportation. On principle, it would seem as if the answer should be otherwise. It would seem as if expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration, and that improvements that will last many years should not be charged wholly against the revenue of a single year. But it is insisted that *Union Pacific Railway Company* vs. *United States*, 99 U. S. 402, established the contrary. That case was not concerned with rates of transportation or the rule which should determine them against shippers * * *. But such is not the relation or concern of a shipper of lumber. His right is immediate. He may demand a service. He must pay a toll, but a toll measured by the reasonable value of the service. The elements of that value may be many and complex, not always determinable, as we have seen, with mathematical accuracy, but, we think, it is clear that instrumentalities which are to be used for years should not be paid for by the revenues of a day or year; and this is the principle of returns upon capital which exists in durable shape."

According to the annual reports made to this Commission by the Nevada County Narrow Gauge Railroad, the gross earnings in ten years have been $1,375,760.23, leaving net earnings of $475,639.79. During this period this company has paid interest on bonded indebtedness and interest-bearing liabilities in the amount of $177,997.64, leaving a surplus from operation of $297,642.15. The surplus of this company, as shown in the books, beginning the fiscal year of 1889–1900, was $143,109.29, which, added to the surplus of the last ten years, makes a total surplus of $440,751.44. From this surplus the Nevada County Narrow Gauge Railroad has paid dividends amounting to $81,315, retired bonds to the extent of $61,000, constructed new lines and made betterments to the extent of $163,941.46 and made miscellaneous deductions amounting to $5,167.01, a total deduction from surplus amounting to $311,423.47. This leaves $129,327.97 to be accounted for. (See

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Table 8.) The auditor of the Nevada County Narrow Gauge Railroad testified that he did not know what had become of the amount named and that he thought it had probably been charged to profit and loss. It cannot be successfully urged that the Nevada County Narrow Gauge Railroad is in need of additional revenue in order to pay operating expenses, interest on funded debt and a reasonable dividend. A glance at the attached statements—see Table No. 4—will show that the percentage of operating expenses to earnings for 1910 was lower than in 1900. It will also reveal the fact that the yearly compensation paid to all employees, except general officers, is less by several thousand dollars in 1910 than it was in 1900. This road in 1900 had a total of seventy employees, exclusive of general officers, the average wage per day for each employee was $2.31, and the yearly compensation was $45,683.40, while in 1910 this road had a total of fifty-six employees, exclusive of general officers, the average wage per day was $2.50, and the yearly compensation was $42,244.90.

The cost of maintenance of way, structures and equipment of the Nevada County Narrow Gauge Railroad does not appear to have increased in the last ten years; in fact, maintenance of roadway was $13,101 in 1900, and $8,371 in 1910. Bridge maintenance in 1900 was $6,223, and in 1910, $3,817.

Maintenance of locomotives was somewhat higher, being $4,731 in 1910 as against $3,765 in 1900, but it is also noted that $7,690 was set aside from earnings in 1909 and 1910 for depreciation in equipment, and in 1908 the sum of $3,828 was set aside for depreciation.

Fuel for locomotives which cost in 1900, $11,089, cost in 1910, $9,339.37. (Table No. 3.)

The defendant carriers, several days after the hearing of this case, requested permission to submit additional data in the way of tonnage statistics and revenue, and the Commission granted them ten days in which to submit this data.

These figures have been received and considered by the Commission. The rates at issue in this case are the less than carload rates. Tariff No. 55 became effective September 20, 1910, and carried a provision for certain rates per ton on less than carload lots of merchandise, rated fourth class and higher, when shipped in ton lots.

The carriers filed Supplement No. 3 to this tariff to become effective March 19, carrying an item limiting these shipments to one ton of each article of each class. It was this item the Commission refused to approve and this proposed change in shipping conditions is what complainant and other protestants seek to have set aside.

The Commission is not considering carload rates which were put in effect September 20, 1910.

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These last figures submitted, covering six months—May to October 1, 1910—indicate that if we permit Supplement No. 3 to become effective, the increase in revenue to carriers on less than carload merchandise will amount to about $2,000 per annum.

Viewing the entire record, it is apparent that the carriers have not justified the proposed increase in rates on less than carload shipments.

No accurate conclusion can be reached from the figures submitted by the carriers covering the carload business handled from May to October, 1910, under rates in effect prior to September 20, 1910, as compared to those placed in effect after that date. These figures indicate a loss in revenue of carload business to the Nevada County Narrow Gauge Railroad of $4,694 and an increase to the Southern Pacific of $2,196, which seems quite impossible and indicates that the figures are not accurate.

The total carload business handled by the Nevada County Narrow Gauge Railroad to Nevada City, when received from the Southern Pacific Company at Colfax, July 1, 1909, to June 30, 1910, amounted to 6,385 tons—gross revenue $12,616—an average rate of $1.97 per ton. (Table No. 2.)

During the period October 1, 1910, to January 31, 1911, during which time the rates were the same to Nevada City proper, regardless of destination, carload business amounted to 2,210 tons, revenue $4,111—yielding an average rate of $1.86 per ton, or a loss on carload business of 11 cents per ton to the Nevada County Narrow Gauge Railroad. Assuming that all carload business handled to Nevada City for the fiscal year 1909–1910, moved under the average rate received during the period October 1, 1910, to January 31, 1911, of $1.86 per ton, the total loss to the Nevada County Narrow Gauge Railroad would amount to about $700. On carload business destined to Grass Valley, for the fiscal year 1909–1910, the Nevada County Narrow Gauge Railroad received from the Southern Pacific Company 8,720 tons—revenue $16,710, an average rate to the Nevada County Narrow Gauge Railroad of $1.92 per ton. From October 1, 1910, to January 31, 1911, under Tariff No. 55, which made rates to Grass Valley the same, regardless of destination, this road handled 2,784 tons in carload lots—revenue $5,295, or an average rate of $1.90 per ton. (Table No. 2.) The loss, therefore, to the Nevada County Narrow Gauge Railroad on carload business to Grass Valley under Tariff No. 55 appeared to be but two cents per ton, and if this ratio is maintained, the total loss in carload business to Grass Valley in a year would hardly exceed $175.

It appears, therefore, that the total loss in carload revenue to the Nevada County Narrow Gauge Railroad will be between $800 and $900 per annum, which is more than made up by the increased revenue received on less than carload merchandise.

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It is the opinion of the Commission that the proposed changes in Supplement No. 3 to Pacific Freight Tariff Bureau Joint Freight Tariff No. 55, restricting merchandise shipments in lots of one ton to one ton of each article of each class is not justified by the evidence submitted in this case, and permission to make such provision become effective is denied. Carriers will be permitted to collect a transfer charge of 15 cents per ton for the transferring of carload lots from broad to narrow gauge cars at Colfax, and will be required to discontinue transfer charge on less than carload shipments.

The Commission is of the opinion that shipments in ton lots, being less than a carload, should move under regular class rates and that the existence of these rates covering shipments of lots of one ton and over indicates that the class rates are too high, but, pending submission to the Commission of a new scale of class rates which will not result in increased charges to shippers, the present tariff rates must be maintained.

The request of the carriers involved that this Commission establish Supplement No. 3 to Pacific Freight Tariff Bureau Joint Freight Tariff No. 55, in so far as Items 92–A and 93–A are concerned, is denied; and it is further ordered that the carriers involved publish and present to this Commission, for establishment, supplement to Pacific Freight Tariff Bureau Joint Freight Tariff No. 55 providing for the elimination of transfer charge at Colfax on less than carload shipments, such tariff to become effective on the fifteenth day of June, 1911.

Dated May 12, 1911.

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TABLE No. 1.

Nevada County Narrow Gauge Railroad Company.

	Tons.	Revenue.	Average rate per ton.
Total freight carried, July 1, 1909, to June 30, 1910	28,369	$64,301 50	$2 27
Total freight carried, October 1, 1910, to January 31, 1911	8,769	19,513 00	2 22
Total tonnage received from Southern Pacific Company at Colfax, July 1, 1909, to June 30, 1910	22,943	55,030 00	2 40
Total tonnage received from Southern Pacific Company at Colfax, October 1, 1910, to January 31, 1911	7,339	17,246 00	2 35
No. 1—Total merchandise, less carloads, handled to Nevada City from Southern Pacific Company at Colfax, including freight for mountain towns which took lower rate than Nevada City proper, July 1, 1909, to June 30, 1910	4,301	14,238 00	3 31
No. 2—Total merchandise, less carloads, handled to Nevada City from Southern Pacific Company at Colfax, which includes freight for mountain towns after all rates were same to Nevada City, regardless of destination, October 1, 1910, to January 31, 1911	1,166	4,060 00	3 48
Same as No. 1 to Grass Valley, July 1, 1909, to June 30, 1910	3,495	11,393 00	3 23
Same as No. 2 to Grass Valley, October 1, 1910, to January 31, 1911	1,174	3,768 00	3 21
Total merchandise, less carloads, to Grass Valley proper, July 1, 1909, to June 30, 1910	3,363	11,186 00	3 33
Total merchandise, less carloads, to Nevada City proper, July 1, 1909, to June 30, 1910	2,806	11,249 00	4 01

TABLE No. 2.

Nevada County Narrow Gauge Railroad Company.

	Tons.	Revenue.	Average rate per ton.
Merchandise, less carloads, to Grass Valley destined to mountain points at rates lower than Grass Valley proper, July 1, 1909, to June 30, 1910	132	$207 00	$1 57
Merchandise, less carloads, to Nevada City destined to mountain points at rates lower than Nevada City proper, July 1, 1909, to June 30, 1910	1,495	2,989 00	2 00
Carloads to Nevada City destined to mountain towns, July 1, 1909, to June 30, 1910	284	395 00	1 40
Carloads destined to Nevada City proper, July 1, 1909, to June 30, 1910	6,101	12,221 00	2 00
All carloads to Nevada City	6,385	$12,616 00	$1 97
Carloads destined to Nevada City (including mountain freight), October 1, 1910, to January 31, 1911	2,210	411 00	1 86
Carloads destined to Grass Valley (none for mountain towns), July 1, 1909, to June 30, 1910	8,720	16,710 00	1 92
Carloads destined to Grass Valley, October 1, 1910, to January 31, 1911	2,784	5,295 00	1 90

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TABLE No. 3.

Nevada County Narrow Gauge Railroad Company.

Not including general officers.

Year.	Total number employees.	Yearly compensation.	Average wage of employees per day.	Fuel for locomotives.
1900	70	$45,683 40	$2 31	$11,089 53
1901	67	44,525 44	2 36	7,555 50
1902	64	40,450 05	2 34	8,850 60
1903	68	41,454 30	2 34	8,916 91
1904	68	41,911 15	2 38	9,886 78
1905	68	43,738 35	2 45	10,912 93
1906	67	43,021 59	2 44	10,571 00
1907	60	44,570 60	2 51	11,155 00
1908	59	40,261 93	2 69	11,399 36
1909	58	46,032 60	2 59	10,445 76
1910	56	42,244 90	2 50	9,339 37

TABLE No. 4.

Nevada County Narrow Gauge Railroad Company.

Period 1900 to 1910, inclusive.

Year.	Gross earnings.	Operating expenses.	Per cent of operating expenses to earnings.
1900	$122,805 03	$71,923 09	58.57 per cent
1901	118,082 92	76,867 67	65.092 per cent
1902	114,510 96	74,453 05	65.0192 per cent
1903	119,328 23	70,806 73	59.3378 per cent
1904	131,604 27	83,589 24	63.518 per cent
1905	125,442 37	86,680 89	69.10 per cent
1906	126,092 17	79,634 31	63.16 per cent
1907	126,881 22	78,674 99	62 per cent
1908	133,158 24	76,874 58	57.28 per cent
1909	124,175 03	83,058 60	66.89 per cent
1910	128,481 36	72,236 81	56.22 per cent

TABLE No. 5.

Nevada County Narrow Gauge Railroad Company.

Total freight carried.	Tons.	Revenue.	Average rate per ton.
July 1, 1899, to June 30, 1900	30,629	$71,310 94	$2 33
July 1, 1900, to June 30, 1901	25,405	63,224 05	2 49
July 1, 1901, to June 30, 1902	22,638	64,699 83	2 86
July 1, 1902, to June 30, 1903	27,878	66,021 18	2 37
July 1, 1903, to June 30, 1904	34,472	75,522 72	2 19
July 1, 1904, to June 30, 1905	34,174	70,438 20	2 06
July 1, 1905, to June 30, 1906	32,074	68,272 59	2 13
July 1, 1906, to June 30, 1907	32,467	69,095 92	2 13
July 1, 1907, to June 30, 1908	32,984	69,882 34	2 12
July 1, 1908, to June 30, 1909	29,342	63,583 21	2 17
July 1, 1909, to June 30, 1910	28,369	64,301 50	2 27
Total	330,432	$746,352 48	$25 12
Average for year	30,039	67,850 22	2 28
October 31, 1910, to January 21, 1911	8,969	19,513 00	2 22

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TABLE No. 6.

Year.	Maintenance of way and structures.						Maintenance of equipment.			
	Renewals of—			Bridges and culverts.	Fences.	Buildings.	Tunnels.	Repairs and renewals of—			Machinery.
	Ties.	Rails.	Roadway.					Locomotives.	Passenger cars.	Freight cars.	
1900		$12,101 69[3]		$6,223 79	$258 08	$1,712 59		$3,785 93	$2,215 93	$2,052 40	$411 08
1901	$2,728 34		$13,101 01	5,021 39		1,078 22	851 26	45,921 16	4,886 83	1,967 61	192 40
1902	1,762 90	8,503 07	10,971 82	2,392 16	436 47	644 55		3,835 95	1,749 66	1,814 88	59 81
1903	1,630 32		10,813 11	2,091 08	1,199 63	631 63		4,594 16	1,880 31	2,484 38	188 05
1904	2,719 32	2,193 50	11,421 80	2,831 45	123 02	2,618 00		4,630 53	1,514 78	4,199 25	312 37
1905	3,064 86	1,294 50	12,402 54	2,409 88	241 52	2,684 26		6,018 43	1,055 53	4,435 62	724 23
1906	1,697 19	1,292 50	11,021 85	2,991 66	425 37	1,531 37		5,412 57	1,986 32	4,282 10	
1907	1,355 67		13,856 42	2,251 15	493 01	912 08		5,206 93	2,581 78	3,711 69	332 91
1908	1,452 65		11,791 76	1,550 22	348 44	686 97		6,906 65	1,623 13	1,907 89	312 14
1909			7,023 19	3,780 71[1]		2,351 12		10,623 96	2,000 00[2]	4,967 80[2]	501 76
1910			8,371 14	3,817 48[1]		897 96		4,731 81	2,000 00[2]	3,164 11[2]	392 77

[1] Includes ties, etc.
[2] Estimated account not segregated.
[3] Not segregated, covers ties, rails and roadway.

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TABLE No. 7.

Southern Pacific Company Statement. Following Figures for the Period from October 1, 1909, to January 31, 1910.

(Not to include advance charges.)

	Tons.	Revenue.	Average rate per ton.
Less than carload lots destined to Nevada City, including merchandise destined to mountain districts which took lower rates than to Nevada City proper	1,163	$10,927 43	$9 40
Less than carload lots to Nevada City proper	707	7,477 02	10 57
Less than carload lots to Nevada City destined to mountain districts	456	3,450 41	7 13
Less than carload lots merchandise destined to Grass Valley, including merchandise destined to mountain districts which took lower rates than to Grass Valley proper	1,059	10,391 86	9.81
Less than carload lots to Grass Valley proper	985	9,998 31	10 15
Less than carload lots to Grass Valley destined to mountain districts	74	393 55	5 31
Total all business delivered to Nevada County Narrow Gauge for same period	5,189	$31,016 72	$5 98

Following Figures for the Period from October 1, 1910, to January 31, 1911.

(Not to include advance charges.)

	Tons.	Revenue.	Average rate per ton.
Less than carload lots of merchandise destined to Nevada City, lots under one ton taking class rates	601	$6,584 65	$10 95
Less than carload lots of merchandise destined to Nevada City, lots one ton and over taking ton rates	527	4,112 75	7 80
Total Nevada City	1,128	$10,697 40	$9 48
Less than carload lots merchandise destined to Grass Valley, lots under one ton taking class rates	704	7,096 22	10 08
Total Grass Valley	1,098	10,305 42	9 40
Total delivered to Nevada County Narrow Gauge	6,170	$37,629 00	$6 10

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TABLE No. 8.

Year.	Income. Earnings from operations.	Income. Other income.	Income. Gross total.	Operating expense.	Taxes.	Net after deducting operating expenses and taxes.	Interest on bonded indebtedness.	Surplus.	Permanent improvements.	Dividends.	Other deductions.	Bonded indebtedness reduced.	Bonds outstanding.
1899								$143,109 29					$250,000 00
1900	$122,805 03	$650 00	$123,455 03	$71,923 09	$3,490 36	$48,041 58	$17,360 00	29,420 54	$8,845 28		$55 91	$4,000 00	246,000 00
1901	118,082 92		118,082 92	76,867 67	3,641 11	37,574 14	17,080 00	19,292 21	12,926 20		23 51	4,000 00	242,000 00
1902	114,510 96		114,510 96	74,453 05	3,637 95	36,419 96	16,800 00	17,874 28	5,423 18			4,000 00	238,000 00
1903	119,328 23		119,328 23	70,806 73	3,426 22	45,095 28	16,520 00	28,295 09	991 10		5,039 45	4,000 00	234,000 00
1904	131,604 27	1,937 67	133,541 94	83,589 24	3,554 19	46,398 51	16,240 00	30,158 51	1,461 30	*$25,020 00	32 30	4,000 00	230,000 00
1905	125,442 37		125,442 37	86,080 89	3,397 40	35,364 08	15,925 00	19,439 08	1,814 40	†12,510 00	15 84	5,000 00	225,000 00
1906	123,092 16	507 36	126,599 52	79,634 31	3,774 20	43,191 01	15,540 00	27,651 01	1,390 12	†12,510 00		6,000 00	219,000 00
1907	126,881 22	687 07	127,568 29	78,674 99	3,993 14	44,897 16	15,120 00	29,777 16	1,408 53	*25,020 00		6,000 00	213,000 00
1908	133,158 24	1,056 13	134,214 37	76,874 58	5,432 50	51,906 29	14,700 00	37,206 29	63,263 28			3,000 00	210,000 00
1909	124,175 08		124,175 08	83,058 60	5,287 48	35,828 95	14,210 00	21,618 95	62,643 68			11,000 00	199,000 00
1910	128,481 36		128,481 36	72,236 81	5,321 72	50,922 83	13,580 00	36,908 03	3,864 39	6,255 00		10,600 00	189,000 00
	$1,370,561 79	$4,838 23	$1,375,400 02	$854,799 96	$44,960 27	$475,639 79	$173,075 00	$440,751 44	$163,941 46	$81,315 00	$5,167 01	$61,000 00	

*10 per cent. †5 per cent.

Recapitulation.

Earnings		$1,375,400 02
Less operating expenses	$854,799 96	
Less taxes	44,960 27	
		899,760 23
Net		$475,639 79
Less bond interest	$173,075 00	
Less interest on interest-bearing liabilities	4,922 64	
		177,997 64
Surplus		$297,642 15
Surplus for 1899		143,109 29
Total		$440,751 44
Less improvements	$163,941 46	
Less dividends	81,315 00	
Less other deductions	5,167 01	
Less retirement	61,000 00	
		311,423 47
Surplus, 1910		$129,327 97

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DECISION NO. 28.

IN THE MATTER OF THE APPLICATION OF THE OAKLAND AND ANTIOCH RAILWAY FOR THE ESTABLISHMENT OF A THROUGH ROUTE AND JOINT RATES IN CONNECTION WITH THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 126.

Decided August 8, 1912.

REPORT OF THE COMMISSION.

Application for establishment of joint rates over the lines of applicant and of Atchison, Topeka and Santa Fe Railway Company in the San Ramon Valley and points common to the lines of respondent and the Southern Pacific Company, on the basis of the through rates of the Southern Pacific Company. Respondent objected to making joint rates with electric lines on any other basis than a combination of locals.

Held, The expense of constructing and operating steam roads and electric roads being compared, the nature of the motive power should not change the situation. Both perform the same service as common carriers and both are subject to the laws governing transportation companies and when public convenience requires the opening of through routes and the establishment of joint rates, the kind of motive power employed by either company is not an element to be considered.

Held, That the rates established, based on the combination of locals, are excessive and unreasonable. The joint rates prescribed by the Commission ordered established.

March 16, 1911, the Oakland and Antioch Railway, a standard gauge electric railway, running from Bay Point, Contra Costa County, to Walnut Creek—a distance of 12 miles—with several branches, made application to the Commission to establish a through route and joint rates in connection with the Atchison, Topeka and Santa Fe Railway Company via Bay Point.

In its application, the Oakland and Antioch Railway stated that it desired to compete with the Southern Pacific Company for traffic moving between points in the San Ramon Valley and points common to the lines of the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company.

The application asked the Commission to establish joint rates between these points via the Oakland and Antioch and the Atchison, Topeka and Santa Fe Railway Company, equal to the through rates of the Southern Pacific, it being obvious that any higher rates would not move any business and be of no benefit to the shipping public.

The Atchison, Topeka and Santa Fe Railway Company at this time declined to become party to any joint rates except on basis of com-

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bination of local rates, which would make very much higher rates than through rates via the Southern Pacific Company; hence the Oakland and Antioch Railway appealed to the Commission to establish rates equal to those of the Southern Pacific Company.

After endeavoring for several months to adjust the matter informally, without success, the Commission directed its rate expert to visit the San Ramon Valley and to report as to whether public convenience demanded the establishment of a through route via the Oakland and Antioch Railway and the Atchison, Topeka and Santa Fe Railway Company.

The rate expert went over the lines of the Oakland and Antioch Railway May 26, 1911, and held public meetings at Walnut Creek and Concord, the two principal towns on the line of this railway. At both meetings every citizen was invited to express his views. A large number of shippers spoke, every one of whom urged the Commission to establish a through route and joint rates, and many reasons were advanced why such action should be taken. The principal reasons advanced were that the Oakland and Antioch Railway served a territory, for a large part, a considerable distance from the Southern Pacific tracks, and if they were permitted to ship through via this line in connection with the Atchison, Topeka and Santa Fe Railway Company, a material saving in cost of teaming would result and damage to fruit, due to long team hauls over rough roads, would be reduced to a minimum; that the price realized for farm products generally was such as to make it essential that farmers embrace every opportunity to save cost of marketing their products; that the service of the Southern Pacific Company was unsatisfactory in respect to time in transit and loading facilities at various stations. The passenger train service was also the subject of complaint, there being but one straight passenger train and one mixed train a day, whereas the Oakland and Antioch, in connection with the Atchison, Topeka and Santa Fe Railway Company, operates five passenger trains daily each way between San Francisco, Oakland, San Ramon and Ygnacio Valley points. The ability to utilize these trains, it was claimed, would be a great benefit to the public and especially to those who had children attending schools in the bay cities.

The farmers of the Ygnacio Valley, served by the Oakland and Antioch Railway, maintain that with a railway serving them with many spur tracks they should not, in order to obtain a reasonable freight rate, be obliged to team six or seven miles to the nearest Southern Pacific station.

The principal hay shipments now made from Walnut Creek are teamed in from points in the direction of Lafayette, beyond Walnut Creek. Through this territory the Oakland and Antioch Railway has built a line, and the shippers desire a through route and joint rates in

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order to save a considerable team haul, which is an item of great importance to such a commodity as hay. Merchants doing business in the towns of Concord and Walnut Creek, served by both the Southern Pacific Company and the Oakland and Antioch Railway, desired to avail themselves of the service of the Oakland and Antioch Railway and the Atchison, Topeka and Santa Fe Railway Company at equal rates because of the belief that superior service would be enjoyed via that route, which would probably bring about an improvement in service on the Southern Pacific.

It was pointed out that the Southern Pacific depot at Concord is nearly a mile from town, while the Oakland and Antioch Railway passes through the edge of the town.

The Commission was given to understand that if it found, on investigation, that a through route was necessary in the interest of public convenience, carriers would submit to the Commission for establishment joint tariffs, and the rates in such tariffs between common points would be those in effect via the Southern Pacific. With this understanding the Commission issued an informal order, directing the Oakland and Antioch Railway and the Atchison, Topeka and Santa Fe Railway Company to present to the Commission for establishment joint rates between all points on the Oakland and Antioch Railway and the Atchison, Topeka and Santa Fe Railway Company in California. In conformity with this informal order, the carriers prepared a joint freight tariff (Joint Freight Tariff No. 2, C. R. C. No. 4, copy of which is hereto attached, marked "Exhibit A"), naming rates between various points on the lines of the Atchison, Topeka and Santa Fe Railway Company and the Oakland and Antioch Railway, said rates being between common points the same as the Southern Pacific rates between the same points. This tariff was presented to the Commission to become effective June 10, 1911, bearing the signatures of the officials of both railways. The Atchison, Topeka and Santa Fe Railway Company concurred in this tariff and furnished the Oakland and Antioch Railway a number (A. T. & S. F. System No. 11145) to appear on the tariff for their account, and this appeared on said joint tariff. Prior to the effective date of the tariff, however, the Atchison, Topeka and Santa Fe Railway Company officials notified the Oakland and Antioch Railway that its concurrence in this joint tariff was withdrawn on orders from their Chicago office. The Atchison, Topeka and Santa Fe Railway Company then presented to the Commission a joint tariff—C. R. C. No. 201—based on the combination of locals of both lines over a through route involving all the points mentioned in Joint Tariff No. 2, C. R. C. No. 4, heretofore mentioned, which through route and joint rates the Commission established, and, after due consideration, questioned the reason-

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ableness of the rates contained in this tariff, and ordered a hearing for the purpose of hearing and determining the reasonableness of freight rates based on a combination of locals, and also as to the advisability of establishing a through route for the transportation of passengers over said connecting lines and joint rates thereon.

At the hearing before the Commission, July 11, 1911, it developed to the satisfaction of the Commission that officials of the Atchison, Topeka and Santa Fe Railway Company had concurred in the Joint Tariff No. 2, C. R. C. No. 4, heretofore mentioned, based on the through rates of the Southern Pacific Company, and the tariff was withdrawn, as was testified by a representative of the Atchison, Topeka and Santa Fe Railway Company, not because the rates were unreasonable, but because its Chicago office was opposed to making joint rates with electric lines on any other basis than a combination of locals.

Testimony was given to the effect that the Atchison, Topeka and Santa Fe Railway Company publishes joint rates in connection with other steam lines, not on a combination of locals, but the same rates as the Southern Pacific Company, in order to meet the competition of that company.

The Commission is not impressed with the arguments advanced for refusal of steam roads to make joint rates in connection with electric lines in competition with an existing through steam line. The practice is general between steam lines, and the nature of the motive power should not change the situation. The practice is general for steam roads to combine and make through rates equal to rates of one carrier which covers the entire territory served by two or more carriers. In so doing the several lines making up the through routes accept as a rule much less than their full locals to points of interchange. Why, then, should we draw the line and restrict joint rates and through routes for the reason that the motive power of one line is electricity and the other steam? Both perform the same service as common carriers and both are subject to the laws governing transportation companies, and we believe that when public convenience requires the opening of through routes and the establishment of joint rates, the kind of motive power employed by either company is not an element to be considered.

It has been contended that many reasons exist why joint rates between steam and electric railways are undesirable, chief of which are: that electric lines are constructed for promotion of real estate transactions; that these lines are cheaply constructed and inexpensive to operate; that such roads have little or no interchangeable equipment. These electric lines, a witness testified, are regarded by steam roads as interlopers.

As to the building of electric lines for real estate promotion, we

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doubt if the builders of many of them invest anywhere near as much in real estate as they do in the railroad. To our minds, if the electric lines serve to better transportation facilities and are of convenience to the shipping and traveling public, the motive of the builders is of little or no consequence.

The fact that sometimes large tracts of land are subdivided and settled upon, and electric lines constructed through them, only serves to increase the necessity of through routes and joint rates to accommodate these settlers.

As to the cost of construction of the two classes of lines, we believe that electric lines of modern construction cost fully as much, if not more, than steam lines, and we believe it can be shown that the two lines, should both be built through the same kind of territory and both to accommodate the same kind and volume of traffic, the electric line would prove to be the more expensive to construct and equip.

Electric lines usually can secure permission more readily to run passenger trains on streets and highways of cities and towns, and this may save them considerable in cost of rights of way, but because this method of operation is not objectionable to the public and steam operation on public highways is highly so, the public should not be penalized for patronizing that service which best fills their wants and necessities.

With reference to the expense of operation, the Commission believes that freight can be, and is, handled more cheaply on steam than electric lines, particularly when the steam lines cover an extensive territory, thereby enabling them to concentrate their business and handle it in large trains.

Regarding the claim of steam roads that electric lines have little or no interchangeable equipment, the same may be said of many of the small steam lines which very often have not sufficient equipment to permit it to leave their rails. It is the custom in this, and other states, for the large steam lines to furnish equipment on a per diem basis for business moving from or to small feeders. Some quite extensive systems in this State do not permit their equipment to leave their rails, and notwithstanding this, the steam line connections deliver cars which may be loaded for points on these lines and furnish their equipment for such traffic as may originate on these lines to be forwarded via the larger systems. This argument only seems to be advanced when some electric road builds into some section which is regarded by an existing steam line as its exclusive territory. It is, therefore, apparent that the real issues in this case are whether or not public convenience and necessity demand the establishment of a through route and joint rates between points reached by the Atchison, Topeka and Santa Fe Railway Company and the Oakland and Antioch Railway, common to the

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Southern Pacific Company, and if so, what joint rates would be reasonable for the through service.

There are joint tariffs on file with this Commission between steam and electric roads, and the divisions of the rates are such as to give both lines less than their full locals.

A through route and joint rates for transportation of freight having been established on filing with this Commission of Joint Tariff, C. R. C. No. 201, heretofore mentioned, based on the combination of locals, the reasonableness of the joint rates therein contained have been investigated by the Commission, and, after due consideration, the Commission finds that the rates therein contained are excessive and unreasonable.

The Commission further finds that the rates named in Joint Freight Tariff No. 2, C. R. C. No. 4, issued by the Oakland and Antioch Railway and concurred in by the Atchison, Topeka and Santa Fe Railway Company. (A. T. & S. F. No. 11145), which tariff was withdrawn at the request of the Atchison, Topeka and Santa Fe Railway Company, are just and reasonable, with the exception of Item No. 47, naming rate on cement, carloads, from San Francisco and Oakland to Walnut Creek of $1.55 per ton; Item No. 53, naming rate on forest products, from Oakland to Walnut Creek of $1.25 per ton; Item No. 88, cereal products, from Stockton to Concord of $2.05 per ton; Item No. 89, cereal products, Stockton to Hookston of $2.05 per ton; Item No. 90, cereal products, Stockton to Walnut Creek of $2.45 per ton, which rates the Commission finds excessive, and the Commission finds the following rates in lieu thereof to be just and reasonable: Cement, carloads, minimum weight 50,000 pounds, San Francisco and Oakland to Walnut Creek $1.25 per ton, of 2,000 pounds; forest products, Oakland to Walnut Creek $1.15 per ton; cereals and cereal products, Stockton to Concord $1.75 per ton, Stockton to Hookston $1.85 per ton and Stockton to Walnut Creek $2.00 per ton.

The following rates are hereby established by this Commission as the rates to be charged by the carriers involved, viz: The Atchison, Topeka and Santa Fe Railway Company, the Oakland and Antioch Railway, the Richmond Belt Railway, on intrastate freight business between the points mentioned; said rates to become effective on the tenth day of September, 1911:

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Class Rates in Cents Per One Hundred Pounds.

Between SAN FRANCISCO OAKLAND and	1	2	3	4	5	A	B	C	D	E
Concord	16	13	10	8	7	7	7	6½	6	6
*Meinert	18	15	12	9	8	8	8	7½	7	7
*Gavin	19	16	13	10	9	9	9	8½	8	8
*Moore	21	18	15	12	11	11	11	10½	10	10
*Walwood	20	17	14	11	10	10	10	9½	9	9
*Hookston	18	15	12	9	8	8	8	7½	7	7
Walnut Creek	18	15	12	9	9	9	9	8½	8	8
*Sarnap	19	16	13	10	10	10	10	9½	9	9
*Napland	21	18	15	12	12	12	12	11½	11	11
Between ANTIOCH and										
Concord	10	8	7	5	4	4	4	4	3½	3½
*Meinert	12	10	9	6	5	5	5	5	4½	4½
*Gavin	14	12	11	8	7	7	7	7	6½	6½
*Moore	16	14	13	10	9	9	9	9	8½	8½
*Walwood	15	13	12	9	8	8	8	8	7½	7½
*Hookston	12	10	9	6	5	5	5	5	4½	4½
Walnut Creek	14	12	11	8	7	7	6	6	5½	5½
*Sarnap	15	13	12	9	8	8	7	7	6½	6½
*Napland	17	15	14	11	10	10	9	9	8½	8½
Between STOCKTON and										
Concord	21	18	14	12	11	11	9½	7½	7	7
*Meinert	23	20	16	13	12	12	10½	8½	8	8
*Gavin	24	21	17	15	13	13	12	10	9	9
*Moore	26	23	19	17	15	15	14	12	11	11
*Walwood	25	22	18	16	14	14	13	11	10	10
*Hookston	23	20	16	13	12	12	10½	8½	8	8
Walnut Creek	25	22	18	15	14	14	11½	9½	9	9
*Sarnap	26	23	19	16	15	15	12½	10½	10	10
*Napland	28	25	21	18	16	16	14	12	11	11

*No agent; freight must be prepaid.

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Commodity Rates.

Commodity.	Between—	And—	Rates per ton of 2,000 pounds.
Liquors, viz: Wine in wood, carload.	Concord	San Francisco Oakland	$1 00
	*Hookston		1 20
	*Gavin		1 40
	*Moore		1 50
	*Walwood		1 45
	*Sarnap		1 35
	*Napland		1 50
Liquors, viz: Wine in wood, carload.	*Hookston	*Junction (Calwa)	4 20
	*Hookston	Points on Richmond Belt Railway	1 10
	From—	**To—**	**Rates per ton of 2,000 pounds.**
Liquors, viz: Wine and brandy in wood, straight T" or mixed carload.	Walnut Creek	San Francisco Oakland	1 20
Cement, carloads: minimum weight, 50,000 pounds.	San Francisco Oakland	Walnut Creek	1 25
Forest products, viz: Lumber, lath, shingles, shakes, fence posts, box or crate stuff and shooks, railroad ties, piles, telegraph and telephone poles (wooden), wooden telephone or telegraph cross-arms, pipe material (wooden), tank material (wooden), sawdust; doors, sash (if glazed, released) and blinds, door and window frames, wired; blocks (base, center, corner and head); moldings; straight or mixed carloads.	San Francisco	Concord	1 25
	San Francisco Oakland	*Hookston	1 25
		*Hookston	1 15
	San Francisco Oakland	*Gavin	1 40
		*Moore	1 50
		*Walwood	1 45
	San Francisco Oakland	Walnut Creek	1 25
		Walnut Creek	1 15
	San Francisco Oakland	*Sarnap	1 40
	San Francisco Oakland	*Napland	1 55
	Oakland	Concord	90
	Stockton	Concord	1 40
		*Hookston	1 60
		Walnut Creek	1 80

*No agent; freight must be prepaid.

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Commodity Rates—Continued.

	Between—	And—	Rates per ton of 2,000 pounds.
Hay and straw, straight or mixed carload.	San Francisco Oakland	Concord	$1 00
		*Gavin	1 25
		*Moore	1 35
		*Walwood	1 30
		*Hookston	1 10
		Walnut Creek	1 15
		*Sarnap	1 30
		*Napland	1.45
	Stockton	Concord	1 50
		*Gavin	1 90
		*Moore	2 00
		*Walwood	2 00
		*Hookston	1 70
		Walnut Creek	1 90
		*Sarnap	2 05
		*Napland	2 20
Sulphur, carload.	San Francisco Oakland	Concord	1 30
		*Moore	2 00
		*Walwood	1 80
		*Hookston	1 50
		Walnut Creek	1 70
		*Napland	2 00

	From—	To—	Rates per ton of 2,000 pounds.
Oils (in tank cars, carload), viz: Petroleum crude oil, petroleum road oil, petroleum oil residuum, petroleum gas oil, petroleum stove. Minimum carload weight will be full gallonage capacity of car, but not to exceed the weight carrying capacity of the car.	Richmond	Concord	$0 90
		Walnut Creek	1 60

*No agent; freight must be prepaid.

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Commodity Rates—Continued.

	Between—	And—	Rates per ton of 2,000 pounds.
Cereals and cereal products: Flour (manufactured from wheat, corn, buckwheat, potatoes and rye), pearl barley, bean meal, shredded biscuit, Ceraline, Corn Flakes, corn meal, farina, Farinose, Germea, grits, Grape Nuts, hominy, Maizea, Malta Vita, oat groats, oat meal, rolled oats, pancake flour, pea meal, Vitos, cracked wheat and cereal breakfast foods (packed in paper, pasteboard, pulpboard or strawboard cartons or packages), in packages, straight or mixed carload.	San Francisco Oakland	Concord	$1 30
		*Hookston	1 40
	San Francisco	Walnut Creek	1 40
	Oakland	Walnut Creek	1 40
	Stockton	Concord	1 75
		*Hookston	1 85
		Walnut Creek	2 00

*No agent; freight must be prepaid.

Live Stock Rates.

In dollars and cents per 30-foot car.

Between and	San Francisco			Oakland.			Stockton		
	Horses, jacks, donkeys, burros, mules.	Cattle.	Sheep, goats, hogs.	Horses, jacks, donkeys, burros mules.	Cattle.	Sheep, goats, hogs.	Horses, jacks, donkeys, burros, mules.	Cattle.	Sheep, goats, hogs.
Concord	$16 50	$16 50	$13 50	$12 00	$12 00	$10 00	$19 00	$19 00	$15 00
*Moore	22 50	22 50	20 00	19 00	19 00	16 00	26 00	26 00	22 00
*Walwood	22 50	22 50	20 00	19 00	19 00	19 00	26 00	26 00	22 00
*Hookston	18 50	18 50	15 50	14 00	14 00	11 00	21 00	21 00	17 00
Walnut Creek	20 00	20 00	16 50	16 00	16 00	13 00	23 00	23 00	18 00
*Sarnap	22 50	22 50	19 00	18 50	18 50	15 50	25 50	25 50	20 50
*Napland	24 00	24 00	20 50	20 00	20 00	17 00	27 00	27 00	22 00

These rates the Commission, after hearing in accordance with the law, due and legal notice of which was given, and careful consideration of the evidence presented at such hearing, and of all the facts, finds to be just and reasonable and the carriers involved are further ordered to publish and distribute and file with this Commission, on or before said date, a tariff of said rates.

The Commission further finds, after hearing in accordance with law, of which due and legal notice was given, that a through route between

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San Francisco, Oakland, and Stockton and points between on the line of the Atchison, Topeka and Santa Fe Railway Company and all points on the Oakland and Antioch Railway, and joint rates thereon should be established over said connecting lines between said points for the transportation of passengers, and the Commission hereby establishes such through route and establishes the following joint rates between the points mentioned, which rates are hereby found to be just and reasonable.

First Class Fares, Continuous Passage.

Between and	Concord.	Hookston.	Walnut Creek.
San Francisco	$1 25	$1 35	$1 50
Oakland	1 25	1 35	1 50
Richmond	95	1 05	1 20
Antioch	60	70	80
Stockton	1 50	1 60	1 70

It is further ordered that in case the carriers involved can not agree upon a division of such joint rates that they appear before this Commission on the thirtieth day of August, 1911, at 10 o'clock a m., at the office of said Commission, Room 7, Ferry Building, at which time and place this Commission will proceed to establish said divisions as prescribed by law.

Dated this 8th day of August, 1911.

C. R. C. No. 4
Only two supplements to this Tariff will be in effect at any time.
Rates named in this Tariff must not be used to make through rates on Interstate Traffic.

OAKLAND & ANTIOCH RAILWAY

IN CONNECTION WITH

Coast Lines of The Atchison, Topeka & Santa Fe Railway

(C. R. C. Concurrence F2-No. 1)

A. T. & S. F. System No. 11145

Joint Freight Tariff No. 2

NAMING

Class and Commodity Rates

BETWEEN

Stations on the Oakland & Antioch Railway

AND

San Francisco, Oakland and Stockton, California, and points between; and Calwa, Cal. On the Coast Lines of the Atchison, Topeka & Santa Fe Railway

Governed, except as otherwise provided herein, by the Western Classification No. 50 (C. R. C. No. 2), supplements thereto and reissues thereof, and by exceptions to said classification, Pacific Freight Tariff Bureau Exception Sheet No. 1-A (C. R. C. No. 3), supplements thereto and reissues thereof.

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ISSUED JUNE 9, 1911. **EFFECTIVE JUNE 10, 1911.**

Issued in compliance with order of the Railroad Commission of the State of California, dated May 31, 1911.

W. G. BARNWELL
General Freight Agent
A. T. & S. F. RY., COAST LINES
Los Angeles, Cal.

H. P. ANEWALT
A. G. F. A.
A. T. & S. F. RY., COAST LINES
San Francisco, Cal.

Issued by
R. H. FISH
Traffic Manager, Oakland & Antioch Ry.
CONCORD, CAL.

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STATIONS FROM AND TO WHICH RATES APPLY.

OAKLAND & ANTIOCH RY. STATIONS.	A. T. & S. F. RAILWAY STATIONS.
Concord	*Junction (Calwa)
*Gavin	Oakland
*Hookston	Richmond
*Meinert	San Francisco
*Moore	Stockton
*Napland	
*Sarnap	
Walnut Creek	
*Walwood	

NOTE: All stations are in California.

EXPLANATION OF REFERENCE MARKS AND TECHNICAL ABBREVIATIONS.

C. R. C.—California Railroad Commission.
*No agent; freight must be prepaid.

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Rules and Regulations.

Item No. 1. Application of Rates. Rates to or from stations not named will be the same as shown in this tariff or supplements thereto, to or from the next more distant station to or from which rates are named in this tariff or supplements thereto. Rates are specific and must not be applied to analogous articles.

Item No. 2. Combination of Rates Versus Through Rates. In every instance where class or commodity rate is named between specified points, the lower of such rates is the lawful rate, provided that, if some combination of class or commodity rates, or class and commodity rates, is found to be lower than the through rate, the lower combination of rates will apply.

Item No. 3. Charge for Less than Carload Freight. The amount charged for less carload freight must not exceed charges for a minimum carload of the same kind of freight.

Item No. 4. Minimum Charge for Less Carload Freight. The minimum charge for any single less carload shipment, whether composed of one or more articles, is twenty-five cents.

Item No. 5. Minimum Charge for Handling Carload Freight. The minimum charge for handling carload freight of all classes and commodities will be $5.00 per car, except when otherwise specifically shown in tariff or supplements thereto. (Does not apply on empty second-hand carriers returned.)

Item No. 6. Minimum Carload Weight. The minimum carload weight on commodities on which carload rates are shown in this tariff or supplements thereto, will be 30,000 pounds, if no minimum carload weight is provided in connection therewith in this tariff or in Western Classification No. 50, C. R. C. No. 2, supplements thereto or reissues thereof, or in exceptions to said Classification No. 50, Pacific Freight Tariff Bureau Exception Sheet No. 1-A, C. R. C. No. 3.

Item No. 7. Terminal Privileges and Charges. Shipments moving under this tariff, supplements thereto or reissues thereof, are subject to terminal charges, privileges, and allowances provided by tariffs of individual lines, parties to this tariff, and lawfully on file with the Railroad Commission of the State of California. Demurrage privileges and charges are published in Car Demurrage Tariff, No. 2-C, Agent E. E. Mote's C. R. C. No. 5, supplements thereto and reissues thereof.

Item No. 8. Transportation of Explosives. Explosives will be handled subject to the rules and regulations of the California Railroad Commission.

Item No. 9. Omitted.

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Class Rates in Cents per 100 Pounds.

Item No.	Between SAN FRANCISCO OAKLAND and	1	2	3	4	5	A	B	C	D	E
10	Concord	16	13	10	8	7	7	7	6½	6	6
11	*Meinert	18	15	12	9	8	8	8	7½	7	7
12	*Gavin	19	16	13	10	9	9	9	8½	8	8
13	*Moore	21	18	15	12	11	11	11	10½	10	10
14	*Walwood	20	17	14	11	10	10	10	9½	9	9
15	*Hookston	18	15	12	9	8	8	8	7½	7	7
16	Walnut Creek	18	15	12	9	9	9	9	8½	8	8
17	*Sarnap	19	16	13	10	10	10	10	9½	9	9
18	*Napland	21	18	15	12	12	12	12	11½	11	11
	Between ANTIOCH and										
19	Concord	10	8	7	5	4	4	4	4	3½	3½
20	*Meinert	12	10	9	6	5	5	5	5	4½	4½
21	*Gavin	14	12	11	8	7	7	7	7	6½	6½
22	*Moore	16	14	13	10	9	9	9	9	8½	8½
23	*Walwood	15	13	12	9	8	8	8	8	7½	7½
24	*Hookston	12	10	9	6	5	5	5	5	4½	4½
25	Walnut Creek	14	12	11	8	7	7	6	6	5½	5½
26	*Sarnap	15	13	12	9	8	8	7	7	6½	6½
27	*Napland	17	15	14	11	10	10	9	9	8½	8½
	Between STOCKTON and										
28	Concord	21	18	14	12	11	11	9½	7½	7	7
29	*Meinert	23	20	16	13	12	12	10½	8½	8	8
30	*Gavin	24	21	17	15	13	13	12	10	9	9
31	*Moore	26	23	19	17	15	15	14	12	11	11
32	*Walwood	25	22	18	16	14	14	13	11	10	10
33	*Hookston	23	20	16	13	12	12	10½	8½	8	8
34	Walnut Creek	25	22	18	15	14	14	11½	9½	9	9
35	*Sarnap	26	23	19	16	15	15	12½	10½	10	10
36	*Napland	28	25	21	18	16	16	14	12	11	11

*No agent--Freight must be prepaid.

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Commodity Rates.

Item No.	Commodity.	Between—	And—	Rates per ton of 2,000 pounds. Except as noted in individual items.
37	Liquors, viz.: Wine in wood, carload.	Concord	San Francisco Oakland	$1 00
38		*Hookston		$1 20
39		*Gavin		$1 40
40		*Moore		$1 50
41		*Walwood		$1 45
42		*Sarnap		$1 35
43		*Napland		$1 50
44	Liquors, viz.: Wine in wood, carload.	*Hookston	*Junction (Calwa)	$4 20
45		*Hookston	Points on Richmond Belt Railway	$1 10
		From—	To—	
46	Liquors, viz.: Wine and brandy in wood, straight or mixed carload.	Walnut Creek	San Francisco Oakland	$1 20
47	Cement, carload, minimum weight 50,000 pounds.	San Francisco Oakland	Walnut Creek	$1 55
48	Forest products, viz.: Lumber, lath, shingles, shakes, fence posts, box or crate stuff and shooks, railroad ties, piles, telegraph and telephone poles (wooden), wooden telegraph or telephone cross-arms, pipe material (wooden), tank material (wooden), sawdust, doors, sash (if glazed, released) and blinds; door and window frames, wired; blocks (base, center, corner and head); mouldings; straight or mixed carloads.	San Francisco	Concord	$1 25
49		San Francisco Oakland	*Hookston	$1 25
50			*Gavin	$1 40
51			*Moore	$1 50
52			*Walwood	$1 45
53			Walnut Creek	$1 25
54			*Sarnap	$1 40
55			*Napland	$1 55
56		Oakland	Concord	$0 90
57		Stockton	Concord	$1 40
58			*Hookston	$1 60
59			Walnut Creek	$1 80

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Commodity Rates—Continued.

Item No.	Commodity.	Between—	And—	Rates per ton of 2,000 pounds. Except as noted in individual items.
60	Hay and straw, straight or mixed carload.	San Francisco Oakland	Concord	$1 00
61			*Gavin	$1 25
62			*Moore	$1 35
63			*Walwood	$1 30
64			*Hookston	$1 10
65			Walnut Creek	$1 15
66			*Sarnap	$1 30
67			*Napland	$1 45
68		Stockton	Concord	$1 50
69			*Gavin	$1 90
70			*Moore	$2 00
71			*Walwood	$2 00
72			*Hookston	$1 70
73			Walnut Creek	$1 90
74			*Sarnap	$2 05
75			*Napland	$2 20
76	Sulphur, carload.	San Francisco Oakland	Concord	$1 30
77			*Moore	$2 00
78			*Walwood	$1 80
79			*Hookston	$1 50
80			Walnut Creek	$1 70
81			*Napland	$2 00

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Commodity Rates—Continued.

		From—	To—	
82	Oils: viz.—(in tank cars, carload) Petroleum crude oil, petroleum road oil, petroleum oil residuum, fuel oil viz: Refinery residuum, petroleum gas oil, petroleum stove. Minimum carload weight will be full gallonage capacity of car but not to exceed the weight carrying capacity of the car.	Richmond	Concord	$0 90
83			Walnut Creek	$1 60

		Between—	And—	
	Cereals and cereal products:			
84	Flour (manufactured from wheat; corn, buckwheat, potatoes and rye), pearl barley, bean meal, shredded biscuit, Ceraline, corn flake, corn meal, Farina, Farinose, Germea, grits, Grape Nuts, hominy, Maizea, Malta Vita, oat groats, oat meal, rolled oats, pancake flour, pea meal, Vitos, cracked wheat and cereal breakfast foods (packed in paper, pasteboard, pulpboard or strawboard cartons or packages), in packages, straight or mixed carloads.	San Francisco Oakland	Concord	$1 30
85			*Hookston	$1 40
86		San Francisco	Walnut Creek	$1 40
87		Oakland	Walnut Creek	$1 40
88		Stockton	Concord	$2 05
89			*Hookston	$2 05
90			Walnut Creek	$2 45

LIVE STOCK RATES.

In dollars and cents per 30-foot car. Rules and regulations are published in Pacific Freight Tariff Bureau Circular No. 2, C. R. C. No. 5, supplements thereto and reissues thereof.

Item No	Between / and	San Francisco			Oakland			Stockton		
		Horses, jacks, donkeys, burros, mules.	Cattle	Sheep, goats, hogs.	Horses, jacks, donkeys, burros, mules.	Cattle.	Sheep, goats, hogs.	Horses, jacks, donkeys, burros, mules.	Cattle.	Sheep, goats, hogs.
91	Concord	$16 50	$16 50	$13 50	$12 00	$12 00	$10 00	$19 00	$19 00	$15 00
92	*Moore	22 50	22 50	20 00	19 00	19 00	16 00	26 00	26 00	22 00
93	*Walwood	22 50	22 50	20 00	19 00	19 00	19 00	26 00	26 00	22 00
94	*Hookston	18 50	18 50	15 50	14 00	14 00	11 00	21 00	21 00	17 00
95	Walnut Creek	20 00	20 00	16 50	16 00	16 00	18 00	23 00	23 00	18 00
96	*Sarnap	22 50	22 50	19 00	18 50	18 50	15 50	25 50	25 50	20 50
97	*Napland	24 00	24 00	20 50	20 00	20 00	17 00	27 00	27 00	22 00

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DECISION NO. 29.

IN THE MATTER OF THE REGULATION OF RATES FOR THE CARRYING OF FREIGHT BETWEEN THE STATIONS WITHIN THE BUSINESS DISTRICT OF THE CITY OF LOS ANGELES AND LOS ANGELES HARBOR BY THE SOUTHERN PACIFIC COMPANY AND THE SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 115.

Decided October 4, 1911.

Complainants allege that certain freight rates of respondents between Los Angeles and San Pedro are excessive and unreasonable. The tariffs of the Southern Pacific Company show many rates in effect for distances several times as great as that between San Pedro and Los Angeles and that rates are maintained over these greater distances as low and in some cases lower than the existing rate of $1.20 per ton on forest products between these two points.

Held, in the absence of evidence to the contrary, the carriers are given the presumption against discrimination and in favor of right dealing with the public. On this presumption the conclusion is reached that the rates which respondent has voluntarily put into effect in other portions of the State, in some cases over similar hauls and in almost all cases in territories where much less traffic is moving, are in themselves reasonable; hence, the conclusion that the rates for this traffic, under the specially favorable circumstances surrounding it, are excessive and unreasonable. Similar consideration given to other communities.

Held, that rates established over the lines between the stated points should not affect the earnings on any freight originating between such points and carried beyond, or vice versa.

Held, that the Commission in this case does not commit itself to any particular theory of rate making; that the rates herein established are fair to respondents on either the theory of comparative rates or on the fair value of the property used by respondents in their business. The effect of the fixation of intrastate rates alone considered in its relation to the earnings of a railroad from interstate business.

REPORT OF THE COMMISSION.

In this case, the complainant, the Board of Harbor Commissioners of the city of Los Angeles, questions the reasonableness of certain freight rates of the Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad Company, on their branch lines between Los Angeles and the harbor at San Pedro. The rates so questioned include all the class rates and certain of the commodity rates. The defendant railway companies deny specifically that such rates are in any way excessive or unreasonable. There is little controversy concerning the nature of the lines of either of the carriers. The evidence shows that the Southern Pacific Company has twenty-four miles of track and the San Pedro, Los Angeles and Salt Lake

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Railroad Company twenty-seven miles; that the operation is surrounded by no unusual difficulties; and that the haul is substantially a floor level haul. There is, however, considerable conflict in the evidence concerning various matters upon which evidence was introduced on behalf of the several parties or at the direct request of the Commission. Witnesses on behalf of the complainant testified that the Southern Pacific Company's line, exclusive of right of way, would cost to reconstruct in its present condition $1,036,757, while the Southern Pacific Company's engineer testified on this point to the sum of $1,154,506. The variance between these amounts is slight. But with reference to the value of the right of way, the conflict is so great that the Commission finds itself in the position of being required to reject in toto either the evidence of the witnesses called on behalf of the complainant or of those called on behalf of the Southern Pacific Company. The two real estate experts called by the complainant are men who have had a very considerable experience in determining land values, both for the city of Los Angeles and for and against railway companies in condemnation and other suits. They testified in substance that the present value of the real estate included in the rights of way of the Southern Pacific Company is $551,361 (Complainant's Exhibit No. 33), while Mr. Pope, representing the Southern Pacific Company, testified that the same real estate has a present value of $12,702,944. (Defendant Southern Pacific Company's Exhibit No. 6.)

We had hoped to be able, in this decision, to adopt some theory of fixing rates more reasonable than that of comparison with other rates, and to this end sought to ascertain "the fair value of the property being used by it (the railroad) for the convenience of the public."

Smith vs. *Ames,* 169 U. S. 466, 546.

Enough evidence has been presented to the Commission so that it has a general knowledge as to the fair value of the property involved. Conceding a valuation very much in excess of that which the evidence shows to be fair, the rates charged by the Southern Pacific Company (and in this portion of the decision we shall deal mainly with that road) are in the main excessive and unreasonable. We do not, however, deem it necessary in this case to commit ourselves to any particular theory of rate making. We have considered both the theory of rate fixing adopted in *Smyth* vs. *Ames, supra,* and the theory of comparative rates, and the rates herein established are fair to the defendants on either theory. We assume that the defendants will not be disposed to question in some other tribunal the correctness of the theory of fixing a rate by comparison with other rates, which theory they have urged is the proper one. Accordingly, in order to test our conclusion that all of the class rates and many of the commodity rates on the San Pedro

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branch of the Southern Pacific Company are unreasonable and excessive, we have compared those rates with other rates of the Southern Pacific Company in this State, where similar traffic moves under substantially similar conditions. Not having determined the broader question as to the reasonableness of all the rates of the Southern Pacific Company within this State, we are disposed to entertain the presumption, for the purposes of this inquiry at least, that this company's rates are reasonable as to all such rates which are not now in question. We are not unmindful of the fact that such comparison may be unduly favorable to the Southern Pacific Company, because, while it has been a comparatively easy matter to find equal distance hauls under generally substantially similar conditions, yet we find no place within the State of California where there is an amount of freight moving over as short a stretch of railroad terminating at the terminals thereof equal to the amount carried between San Pedro and Los Angeles; but we also call attention to the fact, that, while the amount of freight moving over this branch is tremendous, yet by far the larger portion thereof moves in one direction, viz, from San Pedro to Los Angeles. The actual tonnage moved during the eighteen months ending December 31, 1910, was 436,275 tons, from San Pedro to Los Angeles, and 35,677 tons from Los Angeles to San Pedro, necessitating a very large empty car movement from Los Angeles to San Pedro. We have carefully considered this fact and are of the opinion that it ought to and does in a considerable measure overcome the advantage of this particular line of railroad over the portions of the road with which we have compared it in our tables. It must be remembered also that the comparisons shown, particularly as to class rates, cover rates between points where the business is of much less volume than between San Pedro and Los Angeles. If the rates thus compared are reasonable for comparatively small movements, it must be apparent that the rates would be amply remunerative for such a heavy movement as we are here considering.

We have found it necessary to make these comparisons independently of the tables introduced by the parties to this action, because, just as Mr. Pope's value of the right of way is in our opinion grossly in excess of the real value, so a large number of comparative rates introduced by the complainants are likewise unreliable, because of the fact that the conditions under which the hauls are made are not similar to those in this case. In justice to Mr. Gregson, however, it must be said that he testified that he was not familiar with the conditions under which the traffic moved between many of the places submitted in his comparison.

The rates herein established, of course, do not affect the earning on

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any freight which originates at any point upon this line and is carried beyond it, or vice versa, and we have purposely refrained from making any change in rates which would affect the rate upon such movements. If we should in this proceeding establish rates which eliminate any excess which may exist in the rates between points upon this line and points beyond (and, of course, for interstate business this Commission has certainly no such power, and as to intrastate business, even conceding the power, the propriety would be very doubtful), then, should it develop at a later hearing that an entire rate applying to a movement both on and off this branch, as it now stands, is excessive, we would not be in a position to make a reduction because we would already have reduced the railroad's earning power so that the needed reduction could not be made. To illustrate this point, we call attention to the reasoning of the United States Supreme Court in the *Smyth* vs. *Ames* case, already referred to. In that case the court held that even if the railroads in question earned a return upon the fair value of the property through their interstate rates alone, thereby making their earnings from intrastate business, to use a common expression, velvet, yet the legislature of Nebraska could not force the state rates down to a point where they of themselves would be less than reasonable rates. The proper procedure, as pointed out by the court in that case, is to ascertain that proportion of the railroad's property which is properly attributable to intrastate and that proportion which is properly attributable to interstate business. Reasonable rates for intrastate business will then be rates which bring a reasonable return upon that portion of the property which is attributable to intrastate business. In the present case, if the rate from San Pedro to Riverside, for example, should be found to be excessive with the result that the portion of the rate attributable to the San Pedro branch would, necessarily, also be excessive—then, in an investigation of the rates on the San Pedro branch, it would not be proper to deprive the Southern Pacific Company of the excessive earning that it is making upon the rate from San Pedro to Riverside and reduce the rates attributable to the branch lines to such a degree that the excessive earning for the entire movement would be eliminated. The conclusion follows for the reason already suggested, that if this procedure were adopted, then if the rate from San Pedro to Riverside were questioned and found to be excessive, it would not be possible in fairness to reduce it, because the carrier has already been deprived of some of the excess earnings by reason of too great a proportional reduction of the rates on the San Pedro branch. We go into this somewhat in detail for the reason that it has been urged in this case that such reduction should be made in the branch rates as would wipe out all of the excessive earnings, both on the branch business and

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on that which moves beyond. To do this would produce unduly low and favorable rates for the business which is confined to the line between Los Angeles and San Pedro. If such action were taken, it might be necessary in a future proceeding, in which the rates for hauls partly upon the branch and partly off the branch might be found to be excessive, either to refuse a reduction, and thereby work an injustice to the shippers and the public, or to order a reduction and work an injustice upon the railroads.

Another consideration which has been urged upon us in this case is the effect which a lowering of these rates will have on certain business now moving from San Diego to Los Angeles. The distance from San Diego to Los Angeles over the Santa Fe Railway is one hundred and twenty-six miles, and the distance between San Pedro and Los Angeles over the Southern Pacific line is twenty-four miles; yet the rate for these two movements is to-day the same. It is urged that although the Santa Fe at the present time for this one hundred and twenty-six mile haul from San Diego to Los Angeles meets the rates of the Southern Pacific and Salt Lake from San Pedro to Los Angeles, yet should the rates be reduced from San Pedro to Los Angeles below their present amounts, the Santa Fe will not meet such reduction, and ships, instead of landing at San Diego, would land at San Pedro. We sympathize with any community which, by reason of the practices which have been prevalent among the railroads in the past, has relied upon the maintenance of unnatural conditions. No other railroad practice, in our belief, has wrought as much harm to all the people of the United States, and will in the future, if not already, work as much harm to the railroads themselves, as this practice of attempting by an unduly preferential freight rate to afford a community advantages which its natural position does not afford, or by an unduly oppressive rate to deny to some other community advantages which its natural condition entitles it. We say that these practices have worked harm to the people in general, because they work an economic waste. Under ordinary circumstances, one must agree that it costs more to move a ton of freight a thousand miles than a hundred miles, but when a railroad moves freight a thousand miles for a less rate than it moves the same freight a hundred miles, it builds up a population at the thousand mile point and inflicts upon itself the burden of continuing to haul freight in the future, at the low rate, to this thousand mile point; and if the rate to this point is too low, the deficit must be made up from other traffic. It would be just as logical for one to construct his house upon the top of a foundation one thousand feet in height when he could have an equally secure house on a foundation of ten feet, thereby subjecting himself to the burden, during his entire tenancy of this structure, of climbing to the dizzy heights upon which

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he had placed it. We believe that it is the duty of any rate making body to eliminate artificial conditions in the interest of economy for the people, but we recognize the injustice which will be worked upon the people who built upon the faith of preferential freight rates, not by the elimination of the artificial conditions, but by their original imposition. In this case, we do not think any matter competent to be considered by this Commission except the reasonableness of the rate involved upon the San Pedro branch of these lines. Reasonable rates shall not be denied here because unreasonable rates, if such be the case, have been accorded elsewhere.

The carriers maintain the following scale of class rates between Los Angeles and San Pedro:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates:	15	14	12	11	10	10	10	9	8½	8½

We have made a careful and exhaustive comparison of rates between other points on the Southern Pacific Company's lines within California for approximately the same mileage and have ascertained that the average of the rates so compared is considerably lower than the rates above mentioned. This comparison shows that in many instances a lower scale of class rates is in effect for a far greater distance than between San Pedro and Los Angeles and that these lower rates are not influenced in any way by water competition. The average of eighteen scales of class rates in various parts of California not affected by water competition is as follows (Exhibit No. 1):

After carefully weighing all the evidence in this case, bearing in mind the fact that the preponderance of the traffic moves in one direction, and making due allowance for empty car movement, the Commission finds that the present scale of class rates for the transportation of freight is excessive and unreasonable and should not exceed the following:

Classes:	1	2	3	4	5	A	B	C	D	E
Rates:	12	11	10	8	7	7	6	5½	5	5

The complainants in this case especially urge the unreasonableness of the rate on forest products between the port of San Pedro and the city of Los Angeles, and we have given this feature of the case careful consideration. The tariffs of the Southern Pacific Company on file in this office show that many rates are now in effect upon the lines of

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that company within this State for distances several times as great as that between San Pedro and Los Angeles and that rates are maintained over these greater distances as low, and in some cases lower than the existing rate of $1.20 per ton between these two points. These are all cases in which there are no compelling features.

The Commission is driven to one of two conclusions in this matter: either the present rate between San Pedro and Los Angeles is too high, or the carriers have in these many instances favored certain localities and shippers with greatly preferential rates. In the absence of evidence to the contrary, we accord to the carriers the presumption against discrimination and in favor of the right dealing with the public. Indulging this presumption in their favor, we are forced to conclude that the rates which they have thus voluntarily put into effect in other portions of the State, in some cases over similar hauls, and in many cases over more difficult hauls, and in almost all cases in territories where much less traffic is moving, are in themselves reasonable; and if we entertain this presumption, we are driven to conclude that the rates for this traffic under the specially favorable circumstances surrounding it are excessive and unreasonable.

While we are of this opinion and believe that the rates herein established are reasonable, even at the minimum weights now in existence in the Southern Pacific Company's tariffs, yet we believe that, in the interest of economy, wherever such a procedure does not work an injustice to the public, the minimum carload weight should be increased.

At the present time, under forest products, the carriers include sash, doors, door frames, window frames and many articles in a manufactured form which are bulky and can not be loaded to a heavy minimum weight. As to all such, we believe the minimum should remain as it now exists, viz: at 30,000 pounds. But as to all other so called forest products, it should be increased to 40,000 pounds.

A comparison of lumber rates between twenty-two points within the State of California on the line of the Southern Pacific Company, for distances approximately the same as between San Pedro and Los Angeles, discloses the fact that the average rate for this distance is 82 cents per ton. (See Exhibit No. 2.) We do not believe the volume of business between any of the points mentioned in this exhibit in any wise compares with the business between San Pedro and Los Angeles, and this, taken with the fact already mentioned, that a lower rate than the one in existence on the branch in question is maintained by the Southern Pacific Company over much greater distances than the distance we are here considering, leads us to conclude that the rate should be somewhat lower than this average, and we find that a reasonable rate for this movement is 80 cents per ton.

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We have not undertaken to name specific commodity rates in lieu of each commodity rate now in effect where such commodity rates have been found to be unreasonable and excessive, because it will be found that the majority of these commodities will move under the provisions of the Western Classification on the class rates hereinbefore found to be reasonable in this decision. The following carload commodity rates between San Pedro and Los Angeles have been found, after careful consideration, to be unreasonable and excessive:

Beans and peas	$2 00 per ton
Canned goods	2 00 per ton
Cement	1 80 per ton
Iron and steel articles, viz: blooms, muck, puddle bars and steel billets	1 50 per ton
Structural iron and steel	1 50 per ton
Iron, bar and angle	1 50 per ton
Iron, pig	1 50 per ton
Lime, hydrated	1 00 per ton
Wine, in wood	1 90 per ton
Pipe, wrought iron	1 50 per ton
Plaster	1 00 per ton
Sugar	1 50 per ton
Rails, iron and steel and track fastenings	1 50 per ton
Coke	1 70 per ton
Lumber	1 20 per ton
Flour	1 60 per ton
Grain	1 00 per ton
Feed	1 00 per ton
Asphaltum	1 00 per ton
Lead, bar and pig, sheet lead, etc.	2 00 per ton
Canned milk	2 00 per ton
Scrap iron	1 50 per ton

And in lieu of these rates found to be unreasonable, we find the following to be reasonable rates for the transportation of the below mentioned commodities between San Pedro and Los Angeles:

Beans and peas	$1 20 per ton
Canned goods, fish, fruit, milk and vegetables	1 20 per ton
Cement	75 per ton
Structural iron and steel	1 10 per ton
Iron, bar and angle	1 10 per ton
Pipe, wrought iron	1 10 per ton
Plaster	75 per ton
Sugar	1 00 per ton
Rails, iron and steel and track fastenings	1 10 per ton
Coke	90 per ton
Lumber	80 per ton
Flour	1 20 per ton
Grain and feed	80 per ton
Asphaltum	80 per ton

Those commodities moving now under commodity rates which have herein been found excessive, for which we have found no reasonable commodity rate, will move under their appropriate class, according

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to the provisions of the Western Classification and current exceptions thereto.

The rates herein declared to be reasonable are hereby established, to become effective on the 10th day of November, 1911, to be charged by the defendant Southern Pacific Company for the transportation of freight between Los Angeles and San Pedro, in either direction, for the classes and commodities herein named on intrastate business, and said Southern Pacific Company is hereby ordered to publish and distribute and file with the Commission on or before said tenth day of November, 1911, a tariff of said rates.

In order that there may be no confusion as to the rates which we have herein found to be reasonable, and which we hereby establish, we set them out in full as follows, calling attention specifically to the finding herein made concerning the movement under class rates of that freight which has heretofore moved under commodity rates found herein excessive, for which no commodity rates are prescribed:

Class Rates.

Between Los Angeles, California, and	In cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
San Pedro, California	12	11	10	8	7	7	6	5½	5	5

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Commodity Rates.

Between Los Angeles, Cal., and San Pedro, Cal.

Commodity.	Rates in cents per ton of 2,000 pounds.
Asphaltum, carloads, minimum weight 30,000 pounds	80
Beans and peas, dried, carloads, minimum weight 36,000 pounds	120
Canned goods—Fish, fruit, jam, jelly, meats, olives (also in wood), preserved fruits, sauces, tamales, vegetables in tin, glass or earthenware, packages, hermetically sealed, boxed; butter, clam broth, clam juice, soups, in cans hermetically sealed, boxed; soup tablets, boxed; condensed milk, in glass or cans, boxed, in barrels or half-barrels, carloads, minimum weight 36,000 pounds	120
Cement, carloads, minimum weight 50,000 pounds	75
Coke, carloads, minimum weight 40,000 pounds	90
Flour, cereals and cereal products, as described on page 18 of Southern Pacific Local Joint and Proportional Freight Tariff C. R. C. No. 805, and as amended, carloads, minimum weight 36,000 pounds	120
Grain and its products as described in Item 8-B of Southern Pacific Grain Tariff C. R. C. No. 102 and as amended, carloads, minimum weight 30,000 pounds	80
Iron and steel, structural, carloads, minimum weight 40,000 pounds	110
Iron, bar and angle, carloads, minimum weight 40,000 pounds	110
Lumber and its products, as described on page 27 of Southern Pacific Company Local Joint and Proportional Freight Tariff C. P. C. No. 699 and as amended, carloads, minimum weight 40,000 pounds	80
Pipe, wrought iron and connections, carloads, minimum weight 40,000 pounds	110
Plaster, carloads, minimum weight 50,000 pounds	75
Rails, iron or steel, and track fastenings, carloads, minimum weight 50,000 pounds	110
Sugar, carloads, minimum weight 36,000 pounds	100

This decision has dealt with the Southern Pacific Company alone. The Commission feels that sufficient evidence has not been presented to justify a decision with reference to the San Pedro, Los Angeles and Salt Lake Railroad Company. That company, if it is so minded, may meet the rates of the Southern Pacific Company herein established. If it does not desire to do so, it is directed to notify this Commission of that fact within ten days from the date hereof, whereupon we shall take the additional steps necessary to arrive at a conclusion as to what rates should be charged by this Company.

Dated this 4th day of October, 1911.

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EXHIBIT No. 1.

Class Rates in Cents per 100 Pounds.

	Mileage.	1	2	3	4	5	A	B	C	D	
San Francisco to Halvern	25	9	7	7	6	4	4	4	4	3½	3½
San Jose to San Martin	24	13	11	10	9	8	8	7½	7½	6	6
Stockton to Clyde	26	11	9	8	7	6	6	5½	4½	4	3½
Oakdale to Ryer	24	16	15	14	14	9¼	9¼	6½	5¼	5	4¼
Lathrop to Ceres	24	17	15	12	11	9	9	7	6	5	4¼
Byron to Turlock	23	12	12	11	11	7¾	7¼	5¼	4½	4	3½
Turlock to Merced	25	13	12	12	11	8½	7¾	5½	4¾	4½	3¾
Stockton to Modesto	30	12	10	8	7	6	6	6	5¼	5	4¾
Fresno to Caruthers	33	10	9	9	8	6	5¾	4	3¾	3¼	2¾
Tipton to Hanford	33	14	14	13	12	9	8½	5¾	5¼	4½	3¾
Bakersfield to Rio Gravo	22	6	6	6	6	3¾	2¾	2¾	2½	2¼	2
Farmersville to Dinuba	26	10	9	9	8	6	5¾	4	3¾	3	2¾
South Vallejo to Truebody	22	17	12	11	9	8	8	8	6½	6	5½
Lodi to Helesma	23	15	12	11	10	8	8	8	8	6¾	6¾
Benicia to Napa Junction	32	11	10	9	7	6	6	6	6	5½	5½
Antioch to Hookston	23	12	10	9	6	5	5	5	5	4½	4½
Niles to Altamont	26	10	8	7	6	5	5	5	5	4½	4½
Lathrop to Woodbridge	25	10	8	7	6	5	5	5	5	4	4
Average of above		12-	10.55-	9.61-	8.5-	6.74-	6.51-	5.60-	5.17-	4.5-	3.9

EXHIBIT No. 2.

Lumber Rates.

Mileage.	From—	To—	Rates per ton of 2,000 pounds.
22	Folsom	Sacramento	$1 00
24	Verdi	Truckee	75
26	Oroville	Marysville	1 00
22	Lamoine	Dunsmuir	55
42	Morley	Dunsmuir	75
22	Madera	Fresno	1 00
29	Anderson	Kennett	60
30	Emigrant Gap	Colfax	1 20
31	Red Bluff	Keswick	75
21	Blue Canyon	Spruce	1 00
26	Elmore	Redding	60
24	Hooker	Redding	55
39	Chico	Red Bluff	1 00
39	Red Bluff	Chico	60
24	Anderson	Red Bluff	55
24	Friant	Fresno	1 00
25	Clovis	Sanger	90
23	Dos Palos	Firebaugh	70
24	Oakdale	Walthall	1 00
29	Shellville Junction	Yountville	75
25	South Vallejo	Yountville	75
30	Vallejo Junction	San Ramon	1 00
27.3	Average		$0 82

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DECISION NO. 30.

NORTHERN CALIFORNIA POWER COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 128.

Decided October 24, 1911.

Complaint alleges an overcharge for shipment of electrical transformers and asks for reparation. The Commission found that the shipments were not presented in the form required by the tariff, and that the tariff was not unreasonable in its requirements.

Held, That, by reason of such deviation from the tariff, complainant was not entitled to the relief sought.

J. O. Bracken, attorney for complainant Northern California Power Company.

H. C. Booth and *Geo. D. Squires*, attorneys for defendant, Southern Pacific Company.

REPORT OF THE COMMISSION.

In this case the complainant asks reparation from the Southern Pacific Company for an alleged overcharge for two shipments of electrical transformers, from San Francisco to Anderson. These transformers, when crated, take the first class rate. On the shipments in question, the Southern Pacific Company exacted one and one half first class, on the ground that the transformers were not crated, and, hence, this is the proper charge in accordance with its tariffs. It is admitted that the shipments were not crated, but the complainant contends that they were prepared for shipment in a better manner than though crating had been used.

The contention most strongly urged by the complainant is that so long as shipments are prepared on delivery to the carrier in a manner which will insure their safety as well or better than the preparation provided in the tariffs that the carrier has no cause for complaint and can not penalize the shipper. We are not prepared to decide from the evidence that mounting these transformers on skids, as was done by the complainant in this case, affords a better method of protection than though they were crated. In determining the adequacy of a particular form of protection, it is necessary to consider its adaptability, both to the protection of the shipment itself and to the other shipments moving with it. A requirement of a tariff providing for the boxing of a heavy piece of machinery would not necessarily be unreasonable because the

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machinery itself did not require the protection, if it was of such a nature that without such boxing it would tend to damage other freight in the car. The complainant's witnesses admit that their statement that the method of preparation of the shipment in question is better than the crating provided in the tariff only contemplated a better protection for the transformer and that they did not have in mind the fact that the transformer might be required to be prepared in such a manner that it would not injure other freight.

Even admitting, however, that the contention of the complainant in this regard is correct, we can not hold that this, in itself, would entitle it to the relief sought. To do so it will be necessary for us to decide that each particular shipper shall be the judge of the method in which he shall prepare his freight for shipment. Such a position would lead to endless complications and would make it necessary for the representatives of the carrier to decide in every event, independently of the provisions of their tariffs, whether or not shipments presented to them are properly prepared for transportation. We deem it the better rule to require absolute compliance with the terms of the tariff, reserving to shippers and carriers alike the privilege of attacking any portion of a tariff or of a classification, and when it shall appear that a provision is unreasonable, the Commission will require the tariff or the classification to be changed and another tariff or a better classification substituted therefor. In our opinion, it is not shown that the provisions of the Western Classification, requiring transformers to be crated, is unreasonable, and, in the absence of such showing, the complainant can not prevail.

In this case before us there is no room for construction of the tariff. Its provisions are plain and it is admitted that the shipments which are the subject of this complaint were not presented in the form required by the tariff. In cases where there is room for construction as to the meaning of a tariff, as to intrastate shipments, this Commission has the authority and will determine what construction shall be followed. Likewise, as has been already said, where it appears that any provision of a tariff, found in the tariff itself or in the classification governing, is unreasonable, the Commission will order a change and require reasonable provisions to be substituted therefor, but where there is no ambiguity, as in the present case, the Commission would either be required to determine that the portion of the tariff is in itself unreasonable or not grant any relief from a charge exacted in accordance therewith. As we have already pointed out, we are not prepared to decide that the provisions of the Western Classification requiring transformers to be crated is unreasonable, and because of this fact, we will not force or authorize any departure from the same.

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As to those shipments required to be crated which are presented to the carrier boxed, as defined in the Western Classification, we do not decide that such boxing is not a crating under the provisions of that classification, but we are inclined to the belief that where a shipment is prepared in such manner that the requirements of the tariff are *exceeded* that such requirements are certainly complied with. In other words, we recognize a distinction between *deviation* from the requirements of a tariff and *exceeding* the same. But, even though we should hold that exceeding the requirements of a tariff complies with its terms, such a decision, of course, would not authorize the procedure adopted by the shipper in this case, where a marked deviation is shown. As we have already said, however, we deem it the safer rule to follow literally the provisions of the tariff and as to the cases where the provisions have been exceeded, we will reserve a decision until such a case is presented.

Complaint ordered dismissed.

Dated this 24th day of October, 1911.

DECISION NO. 31.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO DISCONTINUE PRACTICE OF ABSORBING SWITCHING CHARGES EXACTED BY THE STATE BELT RAILROAD ON SHIPMENTS PASSING OVER THE WHARVES SERVED BY THE TRACKS OF THE BELT RAILROAD.

Case No. 220.

Decided November 11, 1911.

The question involved in the application is the substitution of a tariff restricting the absorption to certain wharves, for the effective tariff, which does not so restrict.

Held, That the granting of the application would work a discrimination, for which reason the application is denied.

REPORT OF THE COMMISSION.

This case arises from an application of the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company to discontinue the practice of absorbing switching charges of the Belt Line Railroad, operated by the California State Harbor Commission, in the city of San Francisco, on certain wharves. It has been the practice of

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the carriers to absorb this charge on all carload freight received from or delivered to vessels at wharves served by connecting lines in San Francisco, which included the State Belt Railroad, on traffic which originated at or was destined to points west of Albuquerque, Ogden, El Paso and south of Portland, Oregon, as set out in Item 17–B, Supplement No. 15, to Southern Pacific Company Terminal Tariff 230–F, C. R. C. 824, and Atchison, Topeka and Santa Fe Railway Company Terminal Tariff 8117–C, C. R. C. 115, which tariffs were in effect at the time of this application.

These carriers apply for permission to substitute for said provision of the tariff heretofore mentioned a provision limiting the absorption to competitive traffic originating at or destined to points east of the western gateways, viz: Ogden, Deming, El Paso, Albuquerque and Portland, and to confine this absorption to wharves served by the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company. This provision would eliminate the absorption of switching charges to wharves served exclusively by the State Belt Railroad.

The practical effect of this proposed change would be to favor the vessels landing at the wharves set apart for the use of the three carriers in question as against the so-called Bates & Chesebrough line and Matson Navigation Company, which lands at piers 36 and 38, and at any other wharves served by the Belt Railroad other than the wharves under the control of these carriers.

It has been forcibly urged upon the Commission that it has no authority to require the carriers to absorb any of these charges. We do not find it necessary, in disposing of this case, to decide this question.

The question involved in the application is the substitution of a tariff restricting the absorption to certain wharves, for the effective tariff which does not so restrict. If we deny the application and refuse to approach the proposed tariff, the effect of such order will be to retain the provisions of the existing tariff.

The facts upon which this decision is based are admitted and the Commission is of the opinion that, on the admitted facts, the proposed tariff could not but work a discrimination.

These lines absorb the switching charge of the Belt Railroad. After a car leaves their lines, every service for the shipper or consignee thereafter performed is performed by the Belt Line Railroad for the $2.50 per car charge, which the railroads absorb. In view of the fact that every service, after a car leaves the lines of these three carriers, is performed by the Belt Line Railroad, as aforesaid, it would seem to be a matter of indifference to these carriers whether the Belt Line Railroad thereafter placed the car on a wharf exclusively used by one of these

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three carriers, or on some other wharf served by their line—the amount which the carrier must pay to the Belt Line being identical in every case. Certainly no revenue consideration could enter. There is no difference between the character of the service performed by the carrier for the public in one instance from the standpoint of cost of service or revenue, which should make the carrier willing to make the absorption in one case and refuse to do so in another, and the very making of the application, the result of which would be to require some consignee to pay a different charge than other consignees affected by no different conditions, seems in itself to show a desire to discriminate.

We believe that the relationship existing between the carriers in question and the Belt Railroad is practically the same relationship which exists between two carriers over which there is a through route and a joint rate. Where a through route is established, and joint or proportional rates put in, the public is not concerned in the division, this being a matter for agreement between the carriers. (*Allen & Lewis* vs. *O. R. & N. Co.*, 98 Fed. 16; *United States* vs. *A. T. & S. F. R. R. Co.*, 142 Fed. 176.) If one carrier has a blanket rate for its entire service to all points upon its line, as is the case of the Belt Railroad, and another carrier has a joint arrangement with it, it certainly can be no concern of the second carrier if the other chooses to make the same charge for delivery at every point upon its line. It is time for the carriers in question to complain and to urge a different arrangement than the one now in existence when the Belt Railroad makes a different charge for delivery upon one portion of its tracks than upon another. We can see no substantial difference between the arrangement between these carriers and the Belt Railroad and the arrangement between the Southern Pacific and Santa Fe at Los Angeles, which was the subject of the testimony of Mr. Chambers in the so-called switching case (18 I. C. C. Report, page 320). Yet Mr. Chambers, in his testimony, says that the Los Angeles arrangement under discussion brought about a through route and a joint rate over his line, the Santa Fe, and the Southern Pacific. It appears, therefore, that there is in effect a through route and a joint rate over the lines of these carriers and the Belt Railroad, out of which joint rate the Belt Railroad secures $2.50 and the carrier delivering to it receives its rate from the point of origin to San Francisco, less the $2.50 retained by the Belt Railroad as its proportion of such joint rate.

Therefore, if the carriers in this particular case are allowed to charge a through rate from the point of origin of the shipment to San Francisco as to some consignees, they may not charge the same rate plus $2.50 as to others, unless they perform an additional service for the latter which is not performed for the former. The granting of the

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application to put in effect the tariff in question would bring about this result. The Commission, therefore, finds as a fact that the granting of the application of these carriers would work a discrimination, for which reason the application is denied.

There have been matters discussed before the Commission in this case that necessarily affect the interstate and foreign commerce; as to such matters, the Commission, of course, is without authority and renders no decision. Neither this decision, nor any part thereof, shall be held to apply to interstate commerce or to commerce with foreign nations.

Dated this 11th day of November, 1911.

DECISION NO. 32.

IN THE MATTER OF THE RATES OF THE PULLMAN COMPANY FOR SEAT PASSENGERS BETWEEN SAN FRANCISCO AND LOS ANGELES.

Case No. 219.

Decided November 15, 1911.

Reduced Pullman passenger fares between San Francisco and Los Angeles established.

REPORT OF THE COMMISSION.

The complaint in this case questions the reasonableness of the present rates for seats charged by the Pullman Company between San Francisco and Los Angeles, which was held by the complainants to be unreasonable and excessive. Tariffs on file with this Commission by the Pullman Company name rates of $1.50 for single passengers occupying seats in standard Pullman sleeping cars between San Francisco and Los Angeles; for parties of two traveling together, occupying the same section of standard sleeping car, the rate is $2.50, or $1.25 for each passenger; for parties of three traveling together, the charge is $4.00, or $1.33⅓ per passenger; for parties of four traveling together occupying the same section, the rate is $4.50, or $1.12½ per passenger. The Commission does not believe that the number of passengers in one party should make any difference in the rates to be charged, and finds that a reasonable rate for the occupancy of seats in standard Pullman sleeping cars between Los Angeles and San Francisco should not exceed $1.25 per passenger, regardless of the number traveling in a party, and it is ordered that the Pullman Company publish and file with this Commission, on or before thirty days from date of this order, tariff covering such charges.

Dated San Francisco, California, November 15, 1911.

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DECISION NO. 33.

IN THE MATTER OF SUPPLEMENT NO. 4 TO WESTERN CLASSIFICATION NO. 50.

Case No. 216.

Decided November 23, 1911.

Application for establishment of Supplement No. 4 to Western Classification No. 50. Shippers objected to certain increases in rates contained therein, particularly resulting from rating bath tubs from first to double first class. Advantages of the new classification pointed out and the increase also found justifiable by reason of the fact that the tubs on which the rating is raised are the cheaper grades of zinc tubs, which are very light and bulky and seldom used in modern houses.

Ordered approved, the Commission to make a thorough investigation of the reasonableness of the provisions contained in the supplement.

REPORT OF THE COMMISSION.

October 6th F. W. Gomph, agent for the Pacific Freight Tariff Bureau, representing various California lines, presented to the Commission for establishment Supplement No. 4 to Western Classification No. 50. This supplement contained many reductions in ratings to be applied under the terms of the classification and several increases, among which were several articles of plumbers' supplies. The principal complaint made by shippers against the establishment of this supplement was the proposed increase on bath tubs, metal or metal and wood combined, which raised the rating from first to double first class. The other changes were of little or no consequence. The bath tubs on which the rating was raised are the cheaper grades of zinc tubs, which are very light and bulky and are seldom used in modern houses. The rating on the standard bath tubs, such as iron or steel enameled, remained the same as heretofore, namely, first class. The amendment had many advantages proposed in it, having provided for mixed carload ratings on numerous articles shipped by plumbing supply houses, and also a number of reductions in classification on articles other than plumbers' supplies. These proposed changes had been passed upon by the Uniform Classification Committee, and the Commission did not have before it sufficient evidence to justify the rejection of the proposed supplement. The supplement became effective on November 1st in all the territory west of Chicago and the Mississippi River, and the Commission feels that as nearly as practicable the classification should be uniform all over the country, which is the view of the Interstate Commerce Commission in this matter

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The Commission, therefore, entered into a stipulation with the carriers represented by the Pacific Freight Tariff Bureau as follows:

"1. If, after investigation, the Commission believes that any of the items shown in said supplement as raising the classification are unreasonable, the carriers will, upon notification by the Commission, restore the previously existing classification without contest.

"2. On any of the items in controversy which may be found unreasonable by the commission, the carriers will make reparation to shippers or consignees on all shipments which may have moved between November 6, 1911, and the date on which the former classification may be restored on order of the commission."

In view of this stipulation being agreed to by the carriers, the supplement No. 4 to Western Classification No. 50 is hereby established by this Commission to become effective November 2d.

In the mean time, the Commission will make a thorough investigation of the reasonableness of the provisions contained in this supplement and if any items are found to be unreasonable will act in accordance with the stipulation entered into.

San Francisco, California, November 23, 1911.

DECISION NO. 34.

IN THE MATTER OF THE CLASSIFICATION OF NUT MEATS AND NUT KERNELS SHIPPED IN SACKS.

Case No. 217.

Decided November 23, 1911.

Held, That a lower classification on shipments of nut kernels and nut meats, boxed to insure safe transportation, is reasonable.

Held, That the first class rating in shipments of shelled almonds in sacks is reasonable.

REPORT OF THE COMMISSION.

In this case the shippers of nut meats and nut kernels complain that the carriers have raised the classification on these commodities from first class to double first class when shipped in sacks. The records show that for a considerable length of time the classification on nut meats and nut kernels was first class, regardless of whether shipments were in boxes or sacks and that on December 5, 1910, the carriers amended the Western Classification providing that shipments of nut meats and kernels to take the first class rate must be packed in boxes or barrels,

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and made no provision for shipments in sacks, which, under the general ruling in the classification where no specific provision was made, raised shipments in sacks up to double first class. The almond shippers, and handlers of nut meats and kernels generally, protest that it is an unreasonable restriction to compel the boxing of shelled almonds in order to obtain the first class rate. It is maintained by the shippers that shipments of almonds entail no unreasonable risk on the part of the carrier and a number of witnesses testified that there never had been any claims worthy of mention filed for damage to shipments of shelled almonds in sacks. Of some of the other varieties of nut kernels and nut meats shippers admitted that these shipments are now and should be boxed to insure safe transportation, and the Commission believes that a lower classification on such shipments in boxes than in sacks is reasonable. The Commission is of the opinion that shipments of shelled almonds in sacks do not subject the carriers to any greater risk of claims by reason of loss or damage than should these shipments be made in boxes and the carriers apparently agree with the Commission's position in this regard. In accordance with the indicated willingness of the carriers to issue an exception to the Western Classification providing for the first class rating in shipments of shelled almonds in sacks, the Commission orders that on or before thirty days from date an exception to the Western Classification be issued covering first class rating on shelled almonds in sacks.

Dated at San Francisco, California, November 23, 1911.

DECISION NO. 35.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO CANCEL RATE ON SHINGLES FROM FERRY POINT RICHMOND TO STOCKTON.

Case No. 218.

Decided November 26, 1911.

REPORT OF THE COMMISSION.

This is an application on the part of the Atchison, Topeka and Santa Fe Railway Company to cancel rate of 7½ cents per thousand shingles, including wharfage and handling, from Ferry Point Richmond to Stockton, which rate was established as a yarding-in-transit arrange-

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ment for a shingle-drying concern at Stockton, which institution has since gone out of business. The necessity for maintaining this rate, therefore, no longer exists and permission to cancel same is hereby granted.

An order will be entered accordingly.

San Francisco, California, November 16, 1911.

DECISION NO. 36.

IN THE MATTER OF THE REGULATION OF RATES FOR CARRYING OF FREIGHT BETWEEN THE STATIONS WITHIN THE BUSINESS DISTRICT OF THE CITY OF LOS ANGELES AND LOS ANGELES HARBOR BY THE SOUTHERN PACIFIC COMPANY AND THE SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 115.

Decided November 27, 1911.

REPORT OF THE COMMISSION.

Since the application for rehearing in this case, the Commission has again carefully considered all the evidence heretofore introduced, and, after having weighed the evidence introduced on the twenty-fourth day of November, 1911, in conjunction with the evidence heretofore considered, is still of the opinion that the original order is correct and should be adhered to. In every case of doubt arising in this proceeding, we have resolved the doubt in favor of the defendants. The original decision was, and this order is, based upon all the evidence introduced in the case. The mere fact that a rate is put in by a carrier which is lower than would be the case were its officials allowed full sway and were unaffected by any conditions other than those imposed by their own will does not, in our opinion, of itself, indicate that the rate so put in is less than a reasonable rate. But, aside from any of the considerations raised in the application for rehearing, as we have said, after again considering all the evidence, we are of the opinion that the original decision should stand. We did not make as great a reduction in these rates as we believe the evidence would justify, because of the absorptions which the carriers make. If it were not for the making of these absorptions shown in the tariffs affected, we are of the opinion that the rates ordered in by the Commission are still too high. But

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absorptions and all other circumstances considered, we are still of the opinion that the rates set out in the original order are reasonable rates.

In order that the carriers may have time to prepare their tariffs in accordance with this order, the effective date is hereby extended, in accordance with the request of the attorney for the Southern Pacific Company, to the seventh day of December, 1911.

We must still adhere to our original conclusion with reference to the San Pedro, Los Angeles and Salt Lake Railway Company. We have taken into consideration their position, and we can not do more than permit them, if they desire, to meet these rates. The fact that two carriers serve this territory can not, of itself, justify an unreasonably high rate on either of them. Therefore, if this carrier desires to meet the rates ordered in on the Southern Pacific line, it may do so; otherwise, on being notified of its unwillingness to meet these reductions, the Commission will take such further steps as it may deem just.

San Francisco, California, November 27, 1911.

DECISION NO. 37.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY TO CANCEL RATE OF ONE DOLLAR AND FIFTY CENTS PER TON ON LIME WASTE, ALVARADO TO OIL CITY.

Case No. 221.

Decided December 1, 1911.

Ordered that applicant be permitted to cancel rate of $1.50 per ton on lime waste, carloads, between certain points.

REPORT OF THE COMMISSION.

The Southern Pacific Company has had in effect for several years a rate of $1.50 per ton on lime waste, carloads, from Alvarado to Oil City which that company now wishes to cancel.

The facts surrounding the publishing of this rate as stated by the Southern Pacific Company are admitted by the party for whom the rate was established and are as follows:

The rate was established to move lime waste or refuse from the sugar refinery at Alvarado to Oil City where it would be mixed with asphaltum and then reshipped, principally to roofing paper factories, where it would be used in the manufacture of roofing materials, on

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which the carriers would receive another haul. In establishing this low rate, the carriers had in mind these additional movements and the revenue to be derived therefrom, and we are convinced that without the prospects of the rate creating new business and revenue, it would not have been published. It has since developed that this lime waste or refuse was acceptable as a filler for street paving work, and that under this rate of $1.50 per ton, established for the purposes above stated, this commodity was shipped in large quantities to intermediate points in the San Joaquin Valley, upon which the carriers received no additional revenue, which was the original basis for the establishment of the rate. Furthermore, this commodity came into direct competition with powdered lime rock which was being used for the same purpose in street paving. The powdered lime rock rate upon which the carriers expected no additional movements is very much higher than the lime waste or refuse, and as a result the shippers of powdered lime rock complain that they are unable to compete for business on a fair and legitimate basis.

The Commission has no desire to work a hardship on the asphaltum refinery at Oil City, which is controlled by the party for whom the rate of $1.50 per ton on lime waste was established between Alvarado and Oil City, but, being familiar with the reasons leading up to the publication of this rate, we do not feel that the carriers should be called upon to maintain an unreasonably low rate of this kind at intermediate points. We know of no reason why this rate, if continued in effect to Oil City, should not apply to intermediate points and the only suggestion we can offer is that, if consistent, the rate outbound on asphaltum mixed with lime waste be adjusted so as to permit the application of a higher rate on lime waste from Alvarado to Oil City.

The application of the Southern Pacific Company to cancel the rate of $1.50 per ton on lime waste, carloads, from Alvarado to Oil City is hereby granted.

Dated San Francisco, California, December 1, 1911.

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DECISION NO. 38.

SCOTT, MAGNER & MILLER

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 236.

Decided December 26, 1911.

REPORT OF THE COMMISSION.

DISMISSAL OF ACTION.

Complainant having heretofore, on the thirteenth day of January, 1912, filed with this Commission a written request that the action entitled as above be dismissed.

It is hereby ordered that said action be, and the same is hereby dismissed.

By order of the Railroad Commission.

Dated at San Francisco, California, this 16th day of January, 1912.

DECISION NO. 39.

SCOTT, MAGNER & MILLER

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 222.

Decided December 26, 1911.

Complaint alleges overcharges and asks for reparation. Respondent answers that when claims accrued, prior to October 10, 1911, the Commission had no authority to award reparation and that if such authority did exist, the claims had become barred by the statute of limitations.

Held, That the new remedy provided by section 21 of article XII of the Constitution, effective October 10, 1911, attached to such rights as were still alive on said dates.

Held, That claims of applicant having accrued prior to February 10, 1910, were barred by the provisions of the Wright act.

J. O. Bracken, for complainants.

C. W. Durbrow and *George D. Squires*, for defendant.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This action is to recover alleged overcharges on shipments of hay from various points in California to Oakland, California, upon the ground that commodity rates to Oakland were applied, said rates being higher than class C rate to Alameda. As Oakland is claimed to be intermediate to Alameda, complainants maintain that class C rate should have been applied. Defendant claims that, under a proper interpretation of the tariff, Oakland is not intermediate to Alameda, as the logical and reasonable movement from points of origin on shipments in question would be from Tracy via Niles rather than by the longer and circuitous route via Martinez.

The Commission, however, does not consider it necessary to pass upon these conflicting contentions, for the reason that the claims in this case have all become barred by the statute of limitations. In this connection defendant has pleaded (1) that this Commission has no jurisdiction to award reparation on any claims accruing prior to October 10, 1911 (the day on which section 21 of article XII of the Constitution was amended); and (2) that even if the Commission has such power as to such claims, the particular claims which are the subject-matter of this action have become barred by the statute of limitations.

The defendant's first contention we consider to be without merit. Section 21 of article XII of the Constitution of this State, as amended on October 10, 1911, reads in part as follows:

> "Nothing herein contained shall be construed to prevent the railroad commission from ordering and compelling any railroad or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provided no discrimination will result from such reparation."

That a shipper's rights were violated even before October 10, 1911, by the imposition by a carrier of an excessive or discriminatory charge is clear. Excessive charges were forbidden by common law (see *Hutchinson, Carriers,* 3d ed., paragraph 521; *Texas & Pacific Railway Company* vs. *Abilene Cotton Oil Company,* 204 U. S. 426). Charges in violation of the long and short haul clause and discriminatory charges were forbidden by section 21 of article XII of the Constitution and by statute. On October 10, 1911, the new remedy of a proceeding before the Railroad Commission attached to any such right as had not been barred by the statute of limitations. While it is familiar learning that a statute creating a right or penalty is not to be so construed as to have a retroactive operation, it is clear that the State can at any time create

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an additional remedy to apply to an existing right. To this effect, see *Chapman* vs. *State of California*, 104 Cal. 690; *Peralta Land Co.* vs. *Shaffer*, 116 Cal. 518; *Melvin* vs. *State*, 121 Cal. 16; *Downing* vs. *State*, 123 Cal. 316, 319.

There can be no question, under these authorities, that the new remedy provided by section 21 of article XII of the Constitution attached to such rights as were still alive on October 10, 1911.

The next question to be considered is whether the shippers' rights on the claims which are the subject of this proceeding were still alive on October 10, 1911. All these claims accrued in the year 1909. On March 19, 1909, the so-called Wright railroad commission act became effective. That act, in section 21 thereof, provided that shippers having claims against a railroad or other transportation company should first present them to the Railroad Commission, suit to be thereafter brought in the superior court on the Commission's award, in case the defendant refused to pay the award. Section 21 further provided a one-year period for the limitation of actions, in the following language:

> "All complaints for the recovery of damages shall be filed with the Commission within one year from the time the cause of action accrues and not after ———."

The effect of this provision is that all causes of action which accrued more than one year prior to February 10, 1911, on which date the Wright act was repealed, were barred by the provisions of that act. As the claims specified in the complaint in this case all accrued, if at all, prior to February 10, 1910, they had all become barred when the present railroad commission act, on February 10, 1911, repealed the Wright act. Nor did the enactment of the present railroad commission act remove the bar. Although there has been considerable conflict of authority in other states, the Supreme Court of California has uniformly held that if the bar of the statute of limitations has once fallen, the right itself has thereby become extinguished, and can not be revived by a subsequent new statute of limitations. *Billings* vs. *Hall*, 7 Cal. 1; *Swamp Land District* vs. *Glide*, 112 Cal. 85; *Weldon* vs. *Rogers*, 151 Cal. 432; *Dochla* vs. *Phillips*, 151 Cal. 488, 492. It may be well to note also, in this connection, that the present railroad commission act, in repealing the Wright act, made no attempt to remove any bar which had theretofore fallen, but confined itself (see Chapter 17, Laws of 1911, section 48) expressly to "actions or proceedings * * * involving a violation of any of the provisions of *this* act."

It follows that the claims in this action, having accrued prior to February 10, 1910, were barred by the provisions of the Wright act, and that the shipper had accordingly lost his right, if any, before

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section 21 of article XII of the Constitution, as amended on October 10, 1911, conferred upon the Commission the power to order reparation.

The action is ordered dismissed.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

San Francisco, California, January 29, 1912.

DECISION NO. 40.

B. J. McCULLOUGH
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 225.

Decided January 29, 1912.

Complaint makes claim for reparation on shipments of livestock. No through rates for such shipments had been published and no allegation is made that the rates charged were unjust or unreasonable. The question presented is simply the rate actually in effect when the shipment moved.

Held, That the existing classification providing Class B rate on live stock and reading: "Not otherwise provided for" means that the classification is to be applied where commodity rates are not specifically provided for.

Held, That respondent having paid certain claims for reparation on similar shipments on the theory that the class rates were applicable instead of commodity rates, it becomes the duty of respondent to take all necessary proceedings to recover back such payments.

Held, That the rates charged and collected on the shipments in question were excessive in the amounts specified.

J. O. Bracken, for complainant.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The claims in this case arise out of movements of cars of horses and mules from Marysville, Woodland, Tehama and Red Bluff to Crows Landing, in Stanislaus County. Both parties admit that no through rates for these movements had been published, that the governing rate is to be ascertained by a combination of local rates on Sacramento and that in so doing it is proper to apply the commodity rates on horses and mules from points of origin to Sacramento. The question at issue is the proper rate to apply between Sacramento and Crows Landing. Complainant contends that class B rate should be applied, while defendant

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contends that a commodity rate was in existence between these points and that it should be applied, though higher than the class rate. The complaint does not allege that the rates charged by defendant are unjust or unreasonable, and no question concerning the justice or reasonableness of those rates is involved in this case. The question presented by the pleadings is simply the rate actually in effect when the shipments moved.

Complainant relies on the provisions of Exception Sheet No. 1, C. R. C. 2, Western Classification, which provided class B rating on horses, mules and cattle "not otherwise provided for," but contends that the term "not otherwise provided for" appearing in the exception to the Western Classification and the term "n. o. s." (not otherwise specified) in the Western Classification, are synonymous and that as no other rate was specified in said exception sheet as applicable to movements of live stock between the points affected, the governing rate is class B. Defendant contends that the term "not otherwise provided for" means not otherwise provided in any tariffs, and that, inasmuch as specific commodity rates are provided for in Tariff C. R. C. 108, governing live stock shipments between Sacramento and Crows Landing, these commodity rates must be used. Defendant further contends that, irrespective of the proper interpretation of the term "n. o s.," the commodity rates specified in C. R. C. 108 were in effect and that hence, under Rule 7 (*a*) of C. R. C. Tariff Circular No. 1, horses and mules moving between the points affected were taken out of class rates, so that the commodity rates alone were applicable.

The shipments under consideration moved and were paid for between November 24, 1909, and March 14, 1910. C. R. C. Tariff Circular No. 1 became effective May 15, 1909. Section 7 (*a*) reads as follows:

> "In every instance where a commodity rate is named in a tariff upon a commodity, and between specified points, such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class or some combination may make them lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic out of the classification and out of the class rate between the points to which such commodity rate applies."

This rule remained in effect until November 21, 1910, at which time it was amended to read as follows:

> "In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate; provided, that if some combination of class or commodity rates or class and commodity rates is found to be lower than the through rate, the lower combination of rates shall apply and the

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carrier shall immediately make its through rate correspond to the lower combination of rates. It being the intention to give the shipper the advantage of the lowest possible rate."

Defendant maintains that this rule does not entitle shippers to the class rates except where commodity rates are not provided and such being the case, there were no class rates on live stock in effect between Sacramento and Crows Landing. In other words, the defendant's position is that the Western Classification makes no provision for live stock but merely gives reference to live stock tariffs. The defendants published specific live stock commodity rates between all shipping points and consuming markets. This left the rest of their line without any live stock rates in effect for the reason that the Western Classification provided no rating, and, in order to take care of an occasional movement between points other than the regular shipping or consuming markets and save the publication of a tariff containing several hundred thousand rates which would seldom be used, the defendant claims a provision was made in the exception to the Western Classification providing class B rates on live stock not otherwise provided for, which provision was to cover only such occasional movements.

We must consider this item in the exception to the Western Classification in connection with the movement of live stock and the tariffs governing the same. In the live stock Tariff C. R. C. 108, effective at the time the shipments in question moved, the following provision appears:

"Rates named in this tariff and supplements thereto will apply regardless of whether class rates or some combination of class rates make lower."

Considering this provision, the Commission is forced to the conclusion that the provision in the exception to the Western Classification providing class B rating on live stock, reading "not otherwise provided for," means that this rule applies where commodity rates are not specifically provided for.

All shipments which moved between May 15, 1909, and November 21, 1910, as to which it might otherwise have been possible to apply either a class or a commodity rate, were subject to this rule, and as to such shipments the rate was, in fact, the commodity rate. It follows that complainant's contention that he can apply the class B rate between Sacramento and Crows Landing can not be sustained.

It appearing that defendant has paid certain claims for reparation on similar shipments on the theory that the class rates were applicable instead of commodity rates, it becomes the duty of defendant to take all necessary proceedings to recover back such payments. Otherwise defendant lays itself open to the penalties prescribed by law for rebating.

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Defendant's answer admits that the following amounts are now due to complainant on account of overcharges made on certain of the shipments referred to in the complaint, due to the fact that a combination of rates on Davis and Tracy gives a lower rate:

Car	O. R. & N.	13154	March 9, 1910	$0 02
Car	S. P.	76486	March 9, 1910	1 15
Car	S. P.	75744	February 8, 1910	9 20
Car	S. P.	75680	February 8, 1910	9 20
Car	S. P.	75644	February 10, 1910	6 90
				$26 47

The Commission accordingly finds that the rates charged and collected on said five shipments were excessive in the amounts specified and orders and directs defendants to repay said amounts to complainant, with interest at the rate of 7 per cent per annum.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

San Francisco, California, January 29, 1912.

DECISION NO. 41.

F. CAMES COMPANY ET AL.
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 226.

Decided January 29, 1912.

Complaint asks for reparation on shipments of live stock moving between May 1, 1906, and September 1, 1911.

Held, That claims accruing before February 10, 1910, have become barred by the statute of limitations; that between February 10, 1910, and November 21, 1910, wherever a commodity rate was published between specified points, that rate was the lawful rate; and that after November 21, 1910, the shipper is entitled to the advantage of the lowest possible rate, whether class or commodity or a combination.

J. O. Bracken and *L. G. Burnett*, for complainants.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is a complaint to recover alleged overcharges on carload shipments of horses, cattle, sheep and hogs between points within the State

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of California over the lines of defendant Southern Pacific Company, moving between May 1, 1906, and September 10, 1911. The complaint alleges that the defendant applied through commodity rates on these shipments instead of class B on horses and cattle and 80 per cent of class B on sheep and hogs, or a combination of class and commodity rates, the shipper having suffered thereby to the extent of the difference between the rates charged and those which ought to have been charged as so alleged; also that discrimination will result unless this Commission directs the payment of reparation as claimed, for the reason that defendant has paid to certain other shippers claims for reparation on the basis of the lower class rate, which rate defendant has refused to apply for the benefit of complainants. The complaint does not raise any question as to the justice or reasonableness of the rates complained of, other than that they were in excess of what were at the time established rates. The questions presented by the pleadings go simply to the rate actually in effect when the shipments moved.

Defendant's answer alleges that it has collected the lawful rates on all shipments affected and also sets up that the statute of limitations has run on the claims in question and also that the Commission has no jurisdiction to award reparation on any cause of action accruing prior to October 10, 1911.

This Commission has already decided in the case of *Scott, Magner & Miller* vs. *Southern Pacific Company*, No. 222, that the provisions concerning the power of the Commission to award reparation, found in section 21 of article XII of the Constitution of this State, do apply to claims which were still alive on October 10, 1911. The Constitution simply provided the new remedy of proceedings before the Commission for the enforcement of an existing right.

Certain of the shipments in question, however, have been barred by the statute of limitations. As we decided in the case of *Scott, Magner & Miller* vs. *Southern Pacific Company*, *supra*, the effect of the so-called Wright railroad commission act, approved March 19, 1909, was to bar all claims for reparation accruing prior to February 10, 1910. All claims in this action accruing before that date are accordingly barred.

The principal point at issue with reference to those claims which were not barred, namely, those accruing after February 10, 1910, is as to whether or not the rate to be applied is, on the one hand, a commodity rate, as contended for by defendant, or, on the other, a class rate, or a combination of class and commodity rates, as contended for by complainants. C. R. C. 134, effective January 1, 1894, and governed by exceptions to the Western Classification, carried a provision calling for the application of class B rate to horses and cattle and of 80 per cent of class B rate to sheep and hogs when "not otherwise provided for."

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Complainants contend that the phrase "not otherwise provided for" means "not otherwise provided for in this tariff," and that, as no other rate was provided in these tariffs, the class rate must govern. This contention has been decided by this Commission adversely to complainant in the case of *B. J. McCullough* vs. *Southern Pacific Company*, Case 225, which decision is a determination of the same points in so far as raised in this case. We pointed out in that case that live stock was as to most movements "otherwise provided for," namely, in defendant's live stock tariffs, where specific commodity rates were made applicable. In all such cases, the commodity rate was applicable and must govern.

Complainants, however, contend further than even if a commodity rate be thus in effect between two given points, they are, nevertheless, entitled to a combination of class and commodity rates if they can find such combination between the termini of the movements, and such combination makes lower than the through commodity rate. For the purpose of considering this contention, we shall have to consider first the period prior to November 21, 1910, and then the period subsequent to said date.

Rule 7(*a*) of C. R. C. Tariff Circular No. 1 became effective on May 15, 1909, and continued in effect until November 21, 1910, in the following language:

> "7(*a*). In every instance where a commodity rate is named in a tariff upon a commodity, and between specified points, such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic out of the classification and out of the class rates between the points to which such commodity rate applies."

On November 21, 1910, Rule 7*a* was changed so as to read as follows:

> "7*a*. In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate; *provided*, that if some combination of class or commodity rates or class and commodity rates if found to be lower than the through rate, the lower combination of rates shall apply and the carrier shall immediately make its through rate correspond to the lower combination of rates. It being the intention to give the shipper the advantage of the lowest possible rate."

It follows that between May 15, 1909, and November 21, 1910, wherever defendant had established a commodity rate on live stock between two given points that rate must govern, even though some class rate or some combination of rates might make lower. As to all shipments, however, moving subsequent to November 21, 1910, Rule 7*a*

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in its amended form will govern, and the shipper will be entitled to the lowest possible rate applicable to the movement, whether class or commodity or some combination. It must be borne in mind, however, in this connection that even after November 21, 1910, a class rate on live stock does not exist, under the language of defendant's exceptions to Western Classification, in which case defendant has in its live stock tariffs "otherwise provided" a commodity rate.

The complaint further alleges in effect that the Southern Pacific Company has paid certain claims to other shippers by applying a class rate, while it now insists on applying a higher commodity rate as against the complainant in this case and reaches therefrom the conclusion that a discrimination will result in case the commodity rate is now ordered applied as against these complainants. If the defendant, by applying the wrong rate, has paid claims which it should not have paid, it becomes the duty of the defendant to take steps at once to recover the moneys which have been so paid; otherwise, the defendant will be liable to prosecution for rebating. The fact that the defendant may have violated the law in one case certainly can not be held to justify the Commission in directing the violation of the law in other cases. We find no merit in the claim that the doctrine of discrimination will prevent this Commission from ordering a compliance with the law either as to claims for overcharges which have been wrongfully paid or as to other claims for overcharges which may wrongfully have been rejected by the defendant. That doctrine can not be used to prevent the Commission from compelling obedience to the lawful rate.

The complaint further contains certain allegations concerning violations of the long and short haul clause of section 21 of article XII of the Constitution, but there is no allegation and no proof that any shipments moved over the longer distance under the alleged lower rate. Neither the allegations of the complaint nor the evidence in the case justify any finding by the Commission with reference to this point. When a proper case is presented, the Commission will decide the question of reparation growing out of alleged violations of the long and short haul clause.

The Commission finds on the facts presented in this case that claims accruing before February 10, 1910, have become barred by the statute of limitations; that between February 10, 1910, and November 21, 1910, wherever a commodity rate was published between specified points, that rate was the lawful rate; and that after November 21, 1910, the shipper is entitled to the advantage of the lowest possible rate, *whether class or commodity or a combination*; but, as before stated, it must be remembered in this connection that there are no class rates in existence on live stock on the defendant's lines in California when a commodity rate is published between any two points affected.

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It was agreed between the parties at the hearing that they would get together upon the rendition of the decision, and would agree upon the claims as to which reparation might be due under the terms of this decision. The parties will be expected to follow this procedure. In case they can not agree, it is directed that they come before the Commission again, whereupon the Commission will make a supplemental order specifically designating the claims on which reparation is to be awarded under this decision.

The above decision is hereby approved and ordered filed as the decision of this Commission.

San Francisco, California, January 29, 1912.

DECISION NO. 42.

GRAYSON-OWEN
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 230.

Decided January 29, 1912.

Complaint alleges that the through commodity rate charged on live stock shipments is unjust and unreasonable and asking for reparation.

Held, That at the time the shipments were made, rate in effect was the through commodity rate.

Held, That the rate charged was unjust and unreasonable.

J. O. Bracken, for complainant.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

The complaint in this case arises out of certain carload shipments of cattle made by complainant over the defendant's railroad from Gazelle and Sisson to Stockyards, California, between September 15, 1910, and November 3, 1910. It is admitted by both sides that at the time these shipments moved, a commodity rate of $75 on cattle for cars 30 feet in length was in effect from Gazelle to Stockyards and a commodity rate of $74 from Sisson to Stockyards. It is likewise admitted that defendant's tariffs showed a rate on cattle of $55 for a car 30 feet in length from Montague, California, to Suisun, California, said rate being intermediate in effect and applicable from Gazelle and Sisson,

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which points are directly intermediate between Montague and Suisun, and also a rate of $14 from Suisun to Stockyards. Complainant contends that it is entitled to a combination of the local commodity rates, making a total rate of $69 per car, while defendant contends that the applicable rate is the through commodity rate of $75 per car. Complainant also contends that the through commodity rate from Sisson and Gazelle to Stockyards is unjust and unreasonable in the amount that it exceeds the combination of local commodity rates over Suisun.

Rule 7*a* of C. R. C. Tariff Circular No. 1, as it stood at the time the shipments in question moved, read as follows:

> "In every instance where a commodity rate is named in a tariff upon a commodity, and between specified points, such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic out of the classification and out of the class rates between the points to which such commodity rate applies."

It will be noted that the rule at that time stated that "where a commodity rate is named in a tariff upon a commodity, and between specified points, such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class rate or some combination may make lower."

The rule as so worded was in effect from May 15, 1909, to November 21, 1910. As the shipments now under consideration moved between September 15, 1910, and November 3, 1910, it follows that the rate at that time in effect was the through commodity rate, as contended for by the defendant.

However, complainant has specifically pleaded that this rate was an unjust and unreasonable rate and has presented testimony in support of this allegation in the complaint. The Commission finds that the through commodity rate between Sisson and Gazelle on the one hand, and Stockyards on the other, in effect during the movements under consideration was an unjust and unreasonable rate and finds that a just and reasonable rate would not have exceeded $69 per 30-foot car.

The defendant is accordingly ordered and directed to pay to complainant the sum of $260.22, being the difference between the charges paid by the complainant and those which they would have paid if the rate of $69 had been in effect, together with interest at the rate of 7 per cent per annum.

The principle upon which this decision is based shall be extended to all like shipments, and a similar order will be made by the Commission upon the presentation of proof of such like shipments, refunds thereon

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to be made by the carrier after receiving the authorization of the Commission therefor.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

San Francisco, California, January 29, 1912.

DECISION NO. 43.

C. H. JOHNSON, I. SELIG AND J. SELIG, DOING BUSINESS UNDER THE NAME AND STYLE OF J. G. JOHNSON.

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 239.

Decided January 29, 1912.

REPORT OF THE COMMISSION.

This is a case involving claims for reparation growing out of charges paid by complainants to defendant on certain carload shipments of cattle transported by defendant over its line of railroad from Montague, California, to San Francisco, California. Defendant's answer avers that the causes of action set forth in the complaint are barred by the statute of limitations.

The complaint shows on its face that the shipments in question all moved between October 6, 1909, and January 12, 1910. This Commission has already held in several cases that the effect of the so-called Wright act, approved March 19, 1909, was to bar all claims for reparation accruing prior to February 10, 1910, and that no subsequent legislative action has removed the bar of the statute. (See *Scott, Magner & Miller* vs. *Southern Pacific Company*, Case No. 222, and *Cames et al.* vs. *Southern Pacific Company*, Case No. 226.)

The claims, if any, in this case are accordingly all barred, and the action is hereby dismissed.

By order of the Railroad Commission of the State of California.

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DECISION No. 44.

IN THE MATTER OF UNIFORM RULES FOR DEMURRAGE AND RECIPROCAL DEMURRAGE FOR STANDARD GAUGE RAILROADS.

Case No. 242.

Decided February 16, 1912.

REPORT OF THE COMMISSION.

This is an application on the part of Julius Heyman and other shippers to have the free time extended for unloading lumber and other commodities loaded in excess of a given weight. While there seems to be some merit in the claim that heavily loaded cars require a greater length of time to unload, yet it must be remembered that shippers are not required to load beyond a certain minimum, and if they do so, the additional time required to load rests with them entirely. We do not believe that the matter presents a sufficient demand for relief to justify this Commission in establishing a precedent which shall depart from our uniform rules.

The application is denied.

San Francisco, California, February 16, 1912.

DECISION No. 45.

IN THE MATTER OF THE ESTABLISHMENT OF THROUGH ROUTE AND JOINT RATES FOR THE TRANSPORTATION OF FREIGHT BETWEEN POINTS SERVED BY THE NORTHERN ELECTRIC RAILWAY COMPANY AND THE WESTERN PACIFIC RAILWAY COMPANY.

Case No. 227.

Decided February 17, 1912.

Complainant asking for the establishment of through route and joint rates, the Commission orders an inquiry on its own initiative and permits new parties and intervenors to appear.

Held, That in the interest of the public and of the carriers, through route and joint rates should be established between the Northern Electric Railway Company and the Western Pacific Railway Company between the points in question and upon the terms specified.

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Seth Mann, for Northern Electric Railway Company.
Allan P. Matthew, for Western Pacific Railway Company.
C. W. Durbrow, for intervenor Southern Pacific Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The case arises on several applications of Fred W. Dickson et al., asking for the establishment of through route and joint rates between the Western Pacific Railway Company and the Northern Electric Railway Company from and to all points between Chico and Thermalito on the Northern Electric Railway and Marysville on the Western Pacific Railway, on the north, and San Francisco on the south. Sufficient reason appearing therefor, the Commission ordered an inquiry on its own initiative, and made the Northern Electric Railway Company and the Western Pacific Railway Company parties to the proceeding. The Southern Pacific Company was permitted to intervene in opposition to the application.

After a careful investigation, having in mind the interest of the public and of the carriers alike, the Commission is of the opinion that through route and joint rates should be established between the Northern Electric Railway Company and the Western Pacific Railway Company between the points mentioned. The Commission accordingly established a through route between said points and joint rates and a division thereof on all class and commodity freight as follows:

(1) All south or west-bound shipments originating on the line of the Northern Railway Company north of Sacramento, which it is desired to ship over the lines of the Western Pacific Railway Company, under a through route to points south or west of Sacramento, shall be delivered by the Northern Electric Railway Company and received by the Western Pacific Railway Company at Sacramento.

(2) All north or east-bound shipments originating on the line of the Western Pacific Railway Company south or west of Sacramento which it is desired to ship over the line of the Northern Electric Railway Company, under a through route, to points north of Marysville, shall be delivered by the Western Pacific Railway Company and received by the Northern Electric Railway Company at Marysville.

(3) As a matter of traffic convenience, the carriers may make delivery to one another at points other than those hereinbefore specified, provided that the division of the joint rate shall be made on the basis of delivery at the points specified in (1) and (2).

(4) While expressing no opinion at this time as to the reasonableness of the rates of the Southern Pacific Company in the territory comprehended in this investigation, pending inquiry as to such rates the West-

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ern Pacific Railway Company and the Northern Electric Railway Company shall adjust their joint rates, class and commodity, on the basis of the present rates of the Southern Pacific Company from and to competing and common points in said territory.

(5) The joint rates shall be divided between these carriers on the mileage pro-rate basis, provided that the local rates of each company shall be the maximum of its division on the through rate.

The mileage of the Western Pacific Railway Company between Sacramento and San Francisco shall be taken as 88.8 miles, being what is known as the short line mileage.

The carriers are directed to prepare and file within twenty days schedules of tariffs in accordance with this opinion.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

Dated San Francisco, California, February 17, 1912.

DECISION No. 46.

IN THE MATTER OF THE APPLICATION OF CARRIERS PARTIES TO PACIFIC FREIGHT TARIFF BUREAU EXCEPTING SHEET C. R. C. NO. 52 FOR PERMISSION TO ADVANCE THE MINIMUM CARLOAD WEIGHT ON CLAY SEWER PIPE AND CLAY CHIMNEY PIPE, UNDER EIGHTEEN INCHES IN DIAMETER, STRAIGHT CARLOADS OR IN MIXED CARLOADS WITH PIPE EIGHTEEN INCHES OR GREATER IN DIAMETER, FROM TWENTY-FOUR THOUSAND TO TWENTY-SIX THOUSAND POUNDS.

Case No. 223.

Decided February 18, 1912.

Application for order requiring respondents to increase their mininmum carload weight on certain commodities denied upon the finding that while no substantial detriment would accrue to respondent from such action, the small consumers would be injured if the application is allowed.

REPORT OF THE COMMISSION.

In the case the carriers apply to increase their minimum carload weight, straight or mixed carloads, on clay sewer pipe and clay chimney pipe under 18 inches in diameter, from 24,000 pounds to 26,000 pounds. The testimony shows (1) that there is no uniformity between

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the carload weight as applying to shipments from different points and (2) that even under the minimum carload weight of 24,000 pounds, the records of the carriers indicate that the average load of cars of sewer pipe under 18 inches in diameter is in excess of 28,000 pounds. It is urged on the part of the representatives of shippers contesting this application that a denial of it will work no substantial injury to the carrier, while the granting will work a substantial injury to those small consumers of pipe who ordinarily do not require in excess of 24,000 pounds.

We are impressed with the fact that the contention of the shippers is correct. No substantial detriment will accrue to the carrier by denial of this application, while small consumers will certainly be injured if the application is allowed.

We are likewise of the opinion that the practice of the carriers in having a different minimum for shipments moving from different points amounts practically to a discrimination as against those who ship under the provision requiring the higher minimum.

The application is denied and the carriers involved are instructed so to modify their tariffs that in every instance the minimum carload weight on this commodity shall be 24,000 pounds.

This decision is not to affect interstate commerce nor commerce with foreign nations.

The tariff which the carriers apply to amend is a Pacific Freight Tariff Bureau tariff filed by F. W. Gomph, agent for certain carriers specified therein. At the hearing representatives of the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company and the Western Pacific Railway Company, as well as Mr. Gomph, appeared. These three carriers that appeared and all other carriers parties to such tariff are ordered to comply with this decision.

San Francisco, California, February 16, 1912.

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DECISION NO. 47.

L. C. SHELDON
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 229.

Decided February 27, 1912.

Held. The Commission will not lay down any general rule as to the application of tariffs where two or more routes are open to the shipper, but will consider each case upon the facts presented. Complaint dismissed.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Same counsel appeared in this case as did in Case No. 228, and by stipulation they were to be combined, but in taking testimony it developed that there were some points of difference. The cases were therefore heard separately, hence the decisions will be rendered separately.

This case involves a movement of hay from Hayward to Burlingame. The shipment moved October 24, 1910, and the rate charged was $1.50 per ton. Complainant asks that this rate be reduced to 80 cents per ton, for the following reason:

The rate from Hayward to San Francisco is 80 cents per ton. With the completion of the Dumbarton cut-off another route became possible for this movement. Complainant claims that the Dumbarton cut-off was completed September 12, 1910. As a matter of fact, the carriers published no tariff via that route until March 1, 1911, or six months after this movement took place.

The tariff circular giving the rates via the Dumbarton cut-off provided that rates from Fruitvale and south to San Jose on one hand and San Francisco on the other would apply, but defendant claims that this was an error, which has been corrected by providing that on shipments from and to Niles and points south, the Dumbarton rate would apply.

The rate from Hayward to San Francisco has been in effect for many years, and was based on a mileage of twenty miles. The mileage via Dumbarton cut-off would be fifty-two miles.

While the Commission will not lay down any general rule as to the application of tariffs where two or more routes are open to the shipper, but will consider each case upon the facts presented, we see no justice

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in the claim that the 80-cent rate should apply on the shipment in question. The complaint is therefore dismissed.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

San Francisco, California, February 27, 1912.

DECISION No. 48.

GRAYSON-OWEN COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 237.

Decided February 27, 1912.

J. O. Bracken, for complainant.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

In this case complainant alleges an overcharge of $17.55 on a shipment of live stock from Sisson to Pinole. By stipulation the matter is submitted on the testimony presented in Case No. 230. We find the complainant's allegation to be correct, and that the amount of $17.55, on the authority of said case, should be recovered by complainant.

The defendant is accordingly ordered and directed to pay to complainant the sum of $17.55, being the difference between the charges paid by the complainant and those which it would have paid if the proper rate had been applied, together with interest at the rate of 7 per cent per annum from the date hereof until paid.

The principle upon which this decision is based shall be extended to like shipments and a similar order will be made by the Commission upon the presentation of proof of such like shipments, refunds thereon to be made by the carrier after receiving authorization of the Commission therefor.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

Dated at San Francisco, California, February 27, 1912.

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DECISION NO. 49.

GRAYSON-OWEN COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 238.

Decided February 27, 1912.

Reparation awarded on the theory established in Case No. 230.

J. O. Bracken, for complainant.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

In this case the complainant asks for reparation on the ground that the carrier's commodity rate of $75 from Gazelle to Stockyards, California, and $74 Sisson to Stockyards, California, is in excess of a combination of locals on Suisun from these points to Stockyards. There is also an allegation that the rates charged are excessive and unreasonable. By stipulation it is agreed that this case shall be submitted on the testimony in Case No. 230. Complainant claims overcharge of $1,360.96. Of this amount we find $913.52 to be barred by the statute of limitation (Case No. 222). The remainder, namely, $447.54, is found to be an overcharge and to be in excess of what should have been collected by the carrier from this complainant. The defendant is accordingly ordered and directed to pay to complainant the sum of $447.54, being the difference between the charges paid by the complainant and those which it would have paid had the proper rates been imposed (Case No. 230), together with interest at the rate of 7 per cent per annum from the date hereof until paid.

The principle upon which this decision is based shall be extended to like shipments and a similar order will be made by the Commission upon the presentation of proof of such like shipments, refunds thereon to be made by the carrier after receiving authorization of the Commission therefor.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

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DECISION NO. 50.

C. H. JOHNSON, L. SELIG AND J. SELIG, DOING BUSINESS UNDER THE NAME AND STYLE OF J. G. JOHNSON,

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 240.

Decided February 27, 1912.

Reparation awarded on the theory established in Case No. 230.

J. O. Bracken, for complainants.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This case presents the same question as is involved in Case No. 230, No. 237 and No. 238, and the parties have stipulated that it may be submitted on the evidence in Case No. 230. There is an error in the complainant's computation of the amount due under the theory of the case, which error has not been called to our attention by the defendant. We find, however, that if we apply the rates urged as applicable by the complainant that he has been overcharged $164.58 instead of $254.58. On the authority of Case No. 230, we find the complainant overcharged in the sum of $164.58.

The defendant is accordingly ordered and directed to pay to the complainant the sum of $164.58, being the difference between the charges paid by the complainant and those which it would have paid had the proper rate been imposed, together with interest at the rate of 7 per cent per annum from the date hereof until paid.

The principle on which this decision is based shall be extended to like shipments and a similar order will be made by the Commission upon the presentation of proof of such like shipments, refunds thereon to be made by the carrier after receiving authorization of the Commission therefor.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

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DECISION No. 51.

EDWARD SALZ AND MILTON H. SALZ, DOING BUSINESS UNDER THE NAME AND STYLE OF E. SALZ AND SON,

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 241.

Decided February 27, 1912.

Held, That the Commission will determine the question as to whether or not one point is intermediate to two others on the facts presented in each particular case, and will not attempt to lay down a general rule to be followed. Complaint dismissed.

J. O. Bracken, for complainants.

C. W. Durbrow and *George D. Squires*, for defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

Complainant urges that rate of 85 cents per ton of 2,000 pounds from Decoto, California, to Millbrae, California, should apply on shipments of barley, made on October 19th and 28th and December 6, 1910, and January 5, 1911, instead of the rate of $1.55, which is the sum of the local rate from Decoto to San Francisco plus the local rate from San Francisco to Millbrae.

This presents the same question which was raised in Case No. 229, and, as decided in that case, we do not believe that for the purposes of the movement here under consideration, Millbrae is intermediate to Decoto and San Francisco. The Commission will determine the question as to whether or not one point is intermediate to two others on the facts presented in each particular case and will not attempt to lay down a general rule to be followed. It is perfectly evident, however, that if the complainant's contention be correct then wherever there are alternate routes between the same points, whether these lines belong to the same or different carriers, the intermediate rate will not be greater than the through rate. In fact, a more ridiculous condition even than this will result. The line from Oakland to Niles, thence by way of Dumbarton cut-off to San Francisco, is practically circular. The rate from the nearest point to San Francisco to that point would, if complainant's contention be correct, fix the maximum rate which would be charged from any point on this circular route to San Francisco. It is just as logical to say that because the rate from Decoto to San Francisco is 85 cents per ton, and that it is possible for a shipment to

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move by way of the coast line to Burbank, and thence by way of the valley line through Bakersfield and Tracy to San Francisco, that the rate of 85 cents should prevail from all points between Decoto and San Francisco by this circuitous route as to say the points on the Dumbarton cut-off route should all be affected by the Decoto to San Francisco rate.

We find absolutely no merit in the contention and the complaint is ordered dismissed.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

Dated at San Francisco, California, February 27, 1912.

DECISION No. 52.

C. H. JOHNSON, I. SELIG AND J. SELIG, DOING BUSINESS UNDER THE NAME AND STYLE OF J. G. JOHNSON,

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 249.

Decided February 27, 1912.

Reparation awarded on the theory established in Case 230.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this case complainants ask for reparation in the sum of $14.28, or the difference between the charges assessed and collected on shipments of two carloads of cattle from Montague, California, to San Francisco, California.

Two grounds are set forth as a basis for demanding reparation, viz: First, misapplication of Southern Pacific Company Live Stock Tariff 645, C. R. C. 25, under the terms of which the through commodity rate Montague to San Francisco was greater than the combination rates Montague to Suisun and Suisun to San Francisco; second, the alleged unreasonableness of the through commodity rate under which the traffic moved.

Docket No. 230, heretofore decided by this Commission, comprehended the same facts and circumstances as are found in this case, and by stipulation hereunto attached and made a part of this decision, the parties to this action agree that this case may be decided on the record

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of Docket 230. For the reason, therefore, set forth in the decision in Case 230, to wit: on the ground of the unreasonableness of the rate applied on the shipments in question, reparation is hereby awarded to complainants in the sum of $14.28, which amount defendants are directed to pay to complainants.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

J. G. JOHNSON ET AL.
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 249.

It is hereby stipulated by and between the parties to the above entitled proceeding that the same may be and hereby is submitted to the Commission for decision upon the record heretofore made in the proceeding of *Grayson-Owen Company et al.* vs. *Southern Pacific Company*, No. 230, C. R. C., the issues raised being the same in both cases.

J. O. BRACKEN,
Attorney for Complainant.
C. W. DURBROW AND GEO. D. SQUIRES,
Attorneys for Defendant.

Dated February 27, 1912.

DECISION NO. 53.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILWAY COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR PERMISSION TO INCREASE MINIMUM STORAGE CHARGES FOR CONSIGNMENTS HELD IN THEIR WAREHOUSES WITHIN THE STATE OF CALIFORNIA AWAITING DELIVERY.

Case No. 246.

Decided March 12, 1912.

Held. That consignments in warehouses of respondents, for parties located at or near the station, should be taken delivery of within the forty-eight hours free time allowed after notice of arrival has been served.

Ordered. That applicants be permitted to increase minimum storage charges for consignments held in their warehouses awaiting delivery.

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REPORT OF THE COMMISSION.

This case involves an application of the Southern Pacific Company, the Western Pacific Railway Company and the Atchison, Topeka and Santa Fe Railway Company to increase the minimum storage charges on consignments held in their warehouses within the State of California awaiting delivery. The present storage charges of the carriers are:

Consignments of 100 pounds or less, one (1) cent per day.

Consignments of over 100 pounds and not over 500 pounds, two (2) cents per day.

Consignments of over 500 pounds, and not over 1,000 pounds, three (3) cents per day.

Consignments of over 1,000 and not over 1,600 pounds, four (4) cents per day.

Consignments of over 1,600 pounds, five (5) cents per day per ton. Minimum charge on any one consignment five (5) cents.

The charges proposed by the carriers are as follows:

Consignments of 100 pounds or less, one (1) cent per day. Minimum charge five (5) cents.

Consignments of over 100 pounds and not over 500 pounds, two (2) cents per day. Minimum charge ten (10) cents.

Consignments of over 500 pounds and not over 1,000 pounds, three (3) cents per day. Minimum charge fifteen (15) cents.

Consignments of 1,000 pounds and not over 1,600 pounds, four (4) cents per day. Minimum charge twenty (20) cents.

Consignments of over 1,600 pounds and not over 2,000 pounds, five (5) cents per day. Minimum charge twenty-five (25) cents.

Consignments of over 2,000 pounds, five (5) cents per ton per day. Minimum charge twenty-five (25) cents.

It has been urged by the carriers that because of the extremely low rate of storage charges, consignees have been negligent in removing their freight to such an extent that freight sheds have become congested, and that when deliveries were finally made of many consignments, it required the handling of a great deal of freight subsequently received in order to reach freight which had been stored a considerable length of time, also that the compensation received from storage of freight did not reimburse them for the expense of storing shipments and the handling of other freight incidental to making delivery.

The carriers in question publish a special provision for the storage of freight destined to interior non-railroad points. These provisions allow three days additional free storage on shipments destined to points between five (5) and ten (10) miles from the station; five days from

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points between ten (10) and twenty (20) miles from the station; fifteen days to points between twenty (20) and fifty (50) miles; twenty days to points between fifty (50) and one hundred (100) miles, and thirty days to points over one hundred (100) miles from the station.

The Commission considers these provisions reasonable and believes that consignments for parties located at or near the station should be taken delivery of within the forty-eight hours free time allowed after notice of arrival has been served.

The application is granted.

DECISION NO. 54.

FRANK WILLIAMS, JOHN W. HANNAY AND THOMAS LOVELL *vs.* LOS ANGELES AND SAN DIEGO BEACH RAILWAY COMPANY.

Case No. 251.

Decided March 18, 1912.

REPORT OF THE COMMISSION.

ORDER GRANTING MOTION TO STRIKE OUT.

Defendant's motion to strike out the complaint in the case entitled as above is hereby granted—without prejudice, however, to the right of complainants to again file their complaint after the twenty-third instant under the provisions of the Public Utilities Act.

Dated San Francisco, California, March 18, 1912.

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DECISION NO. 55.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO CONTINUE TO CHARGE THE TOLL RATES IN EFFECT ON THE TENTH DAY OF OCTOBER, 1911, UNTIL THE FURTHER ORDER OF THE COMMISSION.

Application No. 2.

Decided March 23, 1912.

REPORT OF THE COMMISSION.

The Pacific Telephone and Telegraph Company having filed its application for permission, pending the further order of this Commission, to continue to charge the rates and tolls shown in the published schedules of long distance tariffs in effect on the tenth day of October, 1911, except where the same have been subsequently reduced, notwithstanding the provisions of section 24 (*b*) of the Public Utilities Act referring to the rates and tolls for long and short distance telephone service.

It is hereby ordered that said applicant be permitted to continue such charges notwithstanding said provisions of said section for a period of thirty days from the date of service of this order, within which period said applicant is directed to file with this Commission schedules of rates complying with the provisions of said section with reference to long and short distance telephone service, or, in case said applicant desires in any case to justify its charge of a greater compensation in the aggregate for the transmission of a long distance message or conversation for a shorter than for a longer distance in the cases specified in subsection (*b*) of said section 24, said applicant shall file within said time an application or applications for permission to continue such charges as provided in said subsection of said section, whereupon a date will be set for hearing the same.

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DECISION NO. 56.

TRAFFIC BUREAU OF THE MERCHANTS EXCHANGE
vs.
SOUTHERN PACIFIC COMPANY AND ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; ASSOCIATED JOBBERS OF LOS ANGELES, STOCKTON JOBBERS AND MANUFACTURERS' ASSOCIATION, KERN COUNTY MERCHANTS' ASSOCIATION, FRESNO TRAFFIC ASSOCIATION, INTERVENORS.

Case No. 116.

Decided March 28, 1912.

Complainants ask the Commission to prescribe the just and reasonable freight rates on the main lines of respondents between Stockton and all points in the San Joaquin Valley, and between all points within the San Joaquin Valley and all other points within the San Joaquin Valley, and between Los Angeles and all points in the San Joaquin Valley. Decision in Case No. 110 referred to as establishing rates between certain of said points.

Held, That the State Constitution, article XII, section 21, preventing the charging of a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer, also preventing the charging of a greater compensation as a through rate than the aggregate of the intermediate rates, is applicable herein.

Held, That the rates in question, from and to points other than those involved in Case No. 110, are excessive, unjust and unreasonable. New schedule of rates established.

REPORT OF THE COMMISSION.

On December 24, 1910, the Railroad Commission decided Case No. 110, wherein an adjustment of the class rates between San Francisco, Stockton, and Los Angeles and San Joaquin Valley points was made, and made the effective date of the order February 15, 1911. Before this date, the Traffic Bureau of the Merchants Exchange of San Francisco applied to the Commission for a rehearing, which application was contested by the Associated Jobbers of Los Angeles. Thereafter and before the effective date of such order, the Commission denied the application for a rehearing. On March 2, 1911, the Traffic Bureau of the Merchants' Exchange of San Francisco filed a complaint against the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company in which complaint that portion of the order in Case No. 110, which provided that Stockton should have "the benefit of a differential under San Francisco equal to the existing class rates from San Francisco to Stockton upon all classes to all points involved" was attacked, and the complainant urged that it was "not concerned

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with these arbitrary additions to said rates as they existed at the time of filing this complaint and provided that the same are left to adjustment brought about by untrammeled water competition and are not on any other manner whatsoever fixed or determined." On this theory of the proper method to make rates from San Francisco in to the San Joaquin Valley, the complaint attacks all class rates from the city of Stockton to all points in the San Joaquin Valley and "charges that said rates applying from Stockton to the points named are, and each of them is, excessive, unreasonable, unjust and unlawful." Regardless of its contention, however, that the rates from San Francisco shall be left "to adjustment brought about by untrammeled water competition and are not in any other manner whatsoever fixed or determined," the complaint prays that this Commission "determine and prescribe what will be the just and reasonable rates and charges to be hereafter observed and charged for the transportation of merchandise from said cities of San Francisco and Stockton, respectively, to points in the San Joaquin Valley." Thereafter the Southern Pacific and the Atchison, Topeka and Santa Fe Railway Company filed answers denying the material allegations of the complaint. The Associated Jobbers of Los Angeles were permitted by the Commission to intervene on the question of the reasonableness of the class rates from Los Angeles to all points in the San Joaquin Valley and from all points within the San Joaquin Valley to Los Angeles, and the Stockton Jobbers and Manufacturers Association, the Kern County Merchants Association and the Fresno Traffic Association were also permitted to intervene on the sole question of the reasonableness of the rates attacked in the complaint and by the Los Angeles intervenors. The case was tried by all parties on the theory that only main line points are involved.

We have therefore directly in issue all the rates on the main lines of these two carriers between Stockton and all points in the San Joaquin Valley and between all points within the San Joaquin Valley and all other points within the San Joaquin Valley, and from Los Angeles to all points in the San Joaquin Valley and from all points within the San Joaquin Valley to Los Angeles, and after careful consideration of all the evidence presented in the case, the Commission is of the opinion and finds, as a fact, that the rates in question, in so far as they exceed the rates set out in the schedule hereto attached and made a part hereof, are excessive, unjust and unreasonable, and the Commission sets out herein schedules of rates to be observed by these carriers, respectively, for the transportation of freight at class rates between the points named herein, and finds the rates set out in such schedules to be just and reasonable rates.

In order that there may be no misapprehension on the part of the carriers involved as to the scope of this decision, we have, as already

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indicated, prescribed the actual rates to be charged between all points involved, and as to such rates there can be no confusion. As to rates from and to points other than those involved in this decision in making such adjustments as may be made necessary by this decision, the carriers will, of course, bear in mind, the provisions of article XII, section 21 of the Constitution of this State preventing the charging of a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer, and also that portion of the same section preventing the charging of any greater compensation as a through rate than the aggregate of the intermediate rates, and likewise article XII, section 20 of the Constitution preventing the increase of any rates without the permission of the Railroad Commission.

Two schedules of class rates are attached hereto and made a part hereof. Schedule No. 1 is hereby established as just and reasonable rates to be observed by the Southern Pacific Company and Schedule No. 2 is hereby established as just and reasonable rates to be observed by the Atchison, Topeka and Santa Fe Railway Company, both of such schedules to become effective on the twenty-seventh day of April, 1912, and before such time the carriers are instructed to present to this Commission, and to distribute as required by law, printed copies of such tariffs.

Dated San Francisco, California, March 28, 1912.

(The schedule of rates herein referred to are on file in the office of the Railroad Commission.)

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DECISION NO. 57.

IN THE MATTER OF THE ESTABLISHMENT OF THROUGH ROUTE AND JOINT RATES FOR THE TRANSPORTATION OF FREIGHT BETWEEN POINTS SERVED BY THE NORTHERN ELECTRIC RAILWAY COMPANY AND THE WESTERN PACIFIC RAILWAY COMPANY.

Case No. 227.

Decided April 6, 1912.

REPORT OF THE COMMISSION.

COMMISSION'S INTERPRETATION OF ORDER.

The order entered by the Railroad Commission in the case entitled as above on the seventeenth day of February, 1912, is considered by this Commission to require the establishment of the through route and joint rates therein specified between the points designated on the line of the Northern Electric Railway Company and all points on the line of the Western Pacific Railway Company between Sacramento and San Francisco inclusive.

Dated at San Francisco, California, April 6, 1912.

DECISION NO. 58.

IN THE MATTER OF THE APPLICATION OF WESTERN UNION TELEGRAPH COMPANY FOR AN ORDER PERMITTING SAID CORPORATION TO CONTINUE EXISTING TOLL RATES AND CHARGES NOT EXCEEDING RATES IN EFFECT ON OCTOBER 10, 1911, UNTIL FURTHER ORDER OF THE COMMISSION.

Application No. 7.

Decided April 8, 1912.

REPORT OF THE COMMISSION.

The Western Union Telegraph Company having filed its application for permission, pending the further order of this Commission, to continue its toll rates and charges not exceeding those in effect on October 10, 1911, notwithstanding the provisions of section 24 (*b*) of

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the Public Utilities Act referring to the rates and tolls for long and short distance telephone and telegraph service,

It is hereby ordered that said applicant be permitted to continue such rates and charges notwithstanding said provisions of said section for a period of thirty days from the date of service of this order, within which period said applicant is directed to file with this Commission schedules of rates complying with the provisions of said section with reference to long and short distance telephone and telegraph service, or in case said applicant desires in any case to justify its charge of a greater compensation in the aggregate for the transmission of a message or conversation for a shorter than for a longer distance in the cases specified in subsection (*b*) of section 24, said applicant shall file within said time an application or applications for permission to continue such charges as provided in said subsection of said section, whereupon a date will be set for hearing the same.

DECISION No. 59.

IN THE MATTER OF THE APPLICATION OF THE RIVERSIDE-REDLANDS INTERURBAN RAILWAY COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 4.

Decided April 12, 1912.

REPORT OF THE COMMISSION.

The Commission having considered the petition of the Riverside-Redlands Interurban Railway Company for a certificate under the provisions of section 50 (*a*) of the Public Utilities Act that the present or future public convenience and necessity require or will require the construction of a railway by said company, as set forth in the application of said company now on file with this Commission, and the Commission having concluded that said company is a "railroad corporation" and not a "street railroad corporation," as said words are used in said section of the Public Utilities Act, and that the provisions of said section do not apply to a "railroad corporation," and that this Commission accordingly has no jurisdiction under the provisions of said section to issue a certificate of public convenience and necessity to the applicant,

It is hereby ordered that said application be and the same is hereby dismissed.

Dated at San Francisco, California, this 12th day of April, 1912.

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DECISION No. 60.

SAN VINCENTE LUMBER COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 231.

Decided April 16, 1912.

REPORT OF THE COMMISSION.

On the application of the complainant, the above entitled case is ordered dismissed.

Dated at San Francisco, this 16th day of April, 1912.

DECISION No. 61.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO CHARGE THE TOLL RATES IN EFFECT ON THE TENTH DAY OF OCTOBER, 1911, UNTIL THE FURTHER ORDER OF THE COMMISSION.

Application No. 2.

Decided April 24, 1912.

REPORT OF THE COMMISSION.

The Pacific Telephone and Telegraph Company having heretofore filed its application, dated April 23, 1912, for leave, pending the further order of the Railroad Commission, to continue to charge the toll rates in effect on October 10, 1911, except where the same have since that date been reduced, which application sets forth a suggested basis of toll rates to remove all deviations from the long and short service provisions of the Public Utilities Act.

It is hereby ordered that permission be and the same is hereby granted to the applicant, until the further order of this Commission, to continue to charge the toll rates in effect on October 10, 1911, in so far as affects deviations from the long and short service rule, except where the rates have since October 10, 1911, been reduced. The Commission will consider the basis submitted by applicant, and will hereafter indicate on what basis and terms, if at all, and to what extent it will grant relief from the provisions of section 24 (*b*) of the Public Utilities Act.

Dated at San Francisco, California, this 24th day of April, 1912.

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DECISION No. 62.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR PERMISSION TO CONTINUE THE DEVIATIONS FROM THE RATES TOLLS, RENTALS AND CHARGES SHOWN IN ITS SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 29.

Decided April 24, 1912.

REPORT OF THE COMMISSION.

Southern California Edison Company, a corporation, having heretofore filed with this Commission its application for permission to make the deviations from its published schedules of charges specified on sheets attached to said schedules numbered as follows, viz.: Sheets Nos. 20, 21, 22, 23, 24, 25 and 26.

It is hereby ordered that said permission be and the same is hereby granted until further order of this Commission.

Dated at San Francisco, California, the 24th day of April, 1912.

DECISION No. 63.

IN THE MATTER OF THE APPLICATION OF MILLER & LUX, INCORPORATED, FOR PERMISSION TO CROSS A PUBLIC STREET IN THE CITY AND COUNTY OF SAN FRANCISCO, TO WIT, KENTUCKY STREET, WITH A SPUR TRACK AT GRADE AND TO CROSS THE TRACK OF A STREET RAILROAD CORPORATION ON SAID KENTUCKY STREET, TO WIT, THE UNITED RAILROADS COMPANY, WITH A SPUR TRACK AT GRADE.

Application No. 8.

Decided April 26, 1912.

REPORT OF THE COMMISSION.

LOVELAND AND THELEN, *Commissioners.*

The above application was filed with this Commission April 17, 1912. It was set down for hearing April 25, 1912, at 10.30 a. m., at the office of the Commission, 833 Market street, San Francisco, Cali-

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fornia, and notice of said application and hearing given to the public through the press and to the United Railroads of San Francisco by mail.

The Commission also directed its chief engineer to personally investigate conditions now existing at the point where the crossing is applied for and those which would be created by granting the application and to report his conclusions to the Commission before the date set for the hearing, said report being a part of the records of this case.

At the time set for hearing the application, it was taken up in due form, the applicant being represented by Mr. L. J. Kennedy, its attorney, and the United Railroads of San Francisco by its chief engineer, Mr. V. P. Legare. Testimony was introduced to show the necessity for said crossing, and that a crossing other than at grade was impracticable owing to large expense.

Applicant offered in evidence, and filed with the Commission, copy of an agreement between the United Railroads of San Francisco and Miller & Lux, Incorporated, under the terms of which agreement said United Railroads of San Francisco waived all objections to and granted said Miller & Lux, Incorporated, the privilege of crossing its double track at the point set forth in the application by a single spur steam railroad track.

At the request of the Commission, applicant also filed as a part of the record a certified copy of an ordinance passed by the board of supervisors of the city and county of San Francisco, California, granting applicant permission to construct, maintain, and operate the crossing as prayed for in the application now under consideration.

Applicant also asked and received permission to amend its application or add thereto the request for permission to cross Burke street at grade in the city and county of San Francisco, California, at a point designated in the ordinance passed by the board of supervisors of the city and county of San Francisco December 6, 1910, to wit: Bill No. 1558, Ordinance No. 1407, as shown by the records of said board.

No one appeared in opposition to granting the application.

The Commission, being satisfied as to the necessity for said crossing, hereby grants the application to said applicant to construct, maintain, and operate a single spur steam railroad track across the double track of the United Railroads of San Francisco at grade, at the point on Kentucky street in the city and county of San Francisco, California, as described and set forth in the ordinance passed by the board of supervisors of the city and county of San Francisco, California, heretofore referred to.

It not being apparent from the language of the ordinance passed by the board of supervisors of the city and county of San Francisco by

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which permission was granted applicant to construct, maintain, and operate a spur track across Kentucky street, that permission was also granted by said board for applicant to cross Burke street, the Commission hereby grants permission for applicant to construct, maintain and operate a spur track across said Burke street, such permission being conditional upon the applicant having first definitely secured permission from the board of supervisors of the city and county of San Francisco for such construction, maintenance, and operation. The Commission reserves the right to revoke said permission as to both crossings whenever, in its judgment, public necessity demands such revocation, and also reserves the right to require said applicant to install and maintain such safety appliances and provide such means to insure the safety of the public as the Commission may consider necessary.

Under these conditions and with this understanding, the applications are hereby granted.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of April, 1912.

DECISION No. 64.

IN THE MATTER OF THE PROVISIONS OF SECTION NO. 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA, RELATING TO LONG AND SHORT HAULS AND THROUGH RATES EXCEEDING THE AGGREGATE OF INTERMEDIATE RATES.

Case No. 214.

Decided April 26, 1912.

Wells, Fargo & Co. permitted to withdraw application to deviate from long and short haul clause.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

In response to notice from the Railroad Commission, dated October 26, 1911, directing the railroad and other transportation companies of the State to present to the Commission new schedules removing the deviations from the provisions of section 21 of article XII of the Constitution of California, relating to long and short hauls and through rates exceeding the aggregate of intermediate rates, or, if it were desired to justify the same, or any of them, an application or applications to be relieved from the provisions of said section, Wells, Fargo &

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Co., on February 13, 1912, filed with the Commission applications for relief in twelve classes of cases. These are the only applications for relief by Wells, Fargo & Co.

These applications were heard on April 12, 1912. On April 24, 1912, the applicant filed with this Commission a written request for permission to withdraw said applications. The result of said withdrawal will be that the constitutional provisions as to long and short haul charges will be in full force and effect as to applicant, so that it will be unlawful for Wells, Fargo & Co., to charge or receive a greater compensation for the transportation of express matter between any points in California for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance or to charge any greater compensation as a through rate than the aggregate of the intermediate rate.

On the foregoing facts, it is hereby ordered that applicant's request for permission to withdraw his applications be and the same is hereby granted, and that said applicant comply at once with all the requirements of said section 21 of article XII of the Constitution of California.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of April, 1912.

DECISION NO. 65.

IN THE MATTER OF THE APPLICATION OF CARRIERS PARTIES TO PACIFIC FREIGHT TARIFF BUREAU'S EXCEPTION SHEET NO. 1-B, C. R. C. 52, TO CANCEL ARRANGEMENTS FOR REDUCED RATING ON SHIPMENTS RETURNED ON ACCOUNT OF DAMAGE IN TRANSIT.

Case No. 257.

Decided April 26, 1912.

Ordered, That applicants be permitted to amend existing tariffs respecting conditions relating to the return of shipments on account of damage in transit.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This case is a continuance of Case 243 which was an application on the part of certain shippers to have rule 10 of Pacific Freight Tariff Bureau Exception Sheet 1-B, C. R. C. No. 52, amended so that goods

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not in closed packages, after having left possession of carrier, may be returned to original shipper and original point of shipment when complete identification of the goods can be made. A hearing was held by the Commission on Case 243 on the thirty-first day of January, 1912, but before a decision was rendered pursuant to such hearing, this case was filed, being an application on the part of the carriers party to the Pacific Freight Tariff Bureau Exception Sheet 1-B, C. R. C. No. 52, to eliminate in its entirety rule 10 of such exception sheet covering half rates on returned shipments, and the Commission deemed it advisable to withhold a decision in Case 243 until Case 257 could be disposed of so that the entire matter might be cleared up at one time.

In Case 243, the complainants urged that paragraphs "A" and "B" of rule 10 should be changed so that the same rule would govern shipments not in closed packages that prevails with reference to shipments in closed packages. I am impressed with the soundness of complainants' contention. The only concern of the carriers, if this rule is to stand at all, is that the goods be identified, so that the purpose of the rule shall not be defeated. It would seem much easier to substitute a package in a closed shipment than one that had been open to the inspection of the carrier's agent at the time of its delivery. Modern traffic necessities often require the receipt of shipments at depots by draymen and other agents of the consignees who necessarily can not readily determine whether or not the goods are of the kind ordered or whether so damaged as to be useless to the consignee. Such being the case if the rule is to stand at all, it should be so amended as to eliminate the distinction between shipments in closed and open packages. Justice to the carriers, however, requires that a sure means of identification be provided.

In Case 257 the carriers, as has already been said, ask to eliminate the entire rule. This rule now stands, with the exception of paragraph "E" and Note 2, in the same form as Rule 9 which is applicable to interstate shipments. Paragraph "E" applies to agricultural implements, vehicles and machinery, and provides for their return at half rates, both for repairs or "on account of being unsalable." The oral statement of the carriers' representatives practically confines their application to the elimination of the words "on account of being unsalable," and I believe that to this extent their application should be allowed. I therefore recommend that rule 10 be amended in the following particulars:

Paragraphs "A" and "B" to be combined as paragraph "A" to read as follows:

> "Goods for return movement properly identified must be presented to carrier within ten days from day of issuance of delivery order for original movement."

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Retain paragraphs "C" and "D" as they now stand, numbering them paragraphs "B" and "C."

Strike out from paragraph "E" as it now stands the words "or on account of being unsalable" and designate said paragraph as paragraph "D."

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated San Francisco, April 26, 1912.

DECISION NO. 66.

IN THE MATTER OF THE APPLICATION OF EARL FRUIT COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK ACROSS DELAWARE STREET IN THE TOWN OF FAIRFIELD, CALIFORNIA.

Application No. 10.

Decided May 4, 1912.

REPORT OF THE COMMISSION.

GORDON and EDGERTON, *Commissioners.*

The town of Fairfield, having, by vote of its board of trustees, on April 16, 1912, revoked the permit which it had theretofore, on April 9, 1912, granted to Earl Fruit Company to construct a spur track across Delaware street in the town of Fairfield, California, which said spur track is the same spur track referred to in the application entitled as above, the said application is hereby dismissed without prejudice.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of May, 1912.

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DECISION No. 67.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN CALIFORNIA EDISON COMPANY FOR PERMISSION TO CONTINUE CERTAIN DEVIATIONS FROM THE RATES, TOLLS, RENTALS AND CHARGES SHOWN IN ITS SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 29.

Decided May 1, 1912.

REPORT OF THE COMMISSION.

ORDER.

Southern California Edison Company, a corporation, having heretofore filed with this Commission its supplemental petition dated May 2, 1912, for permission to make deviations from its published schedules of charges in the additional cases specified in Exhibit "A" attached to said application,

It is hereby ordered that said permission be and the same is hereby granted until the further order of this Commission.

Dated at San Francisco, California, this 4th day of May, 1912.

DECISION No. 68.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR PERMISSION TO CONTINUE CERTAIN DEVIATIONS FROM THE RATES, TOLLS, RENTALS AND CHARGES SHOWN IN ITS SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 29A.

Decided May 1, 1912.

REPORT OF THE COMMISSION.

Santa Barbara Gas and Electric Company, a corporation, having filed with this Commission its supplemental application dated May 2, 1912, for permission to make deviations from its published schedules of

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charges in the additional cases specified in Exhibit "A" attached to said application.

It is hereby ordered that said permission be and the same is hereby granted until the further order of this Commission.

Dated at San Francisco, California, this 4th day of May, 1912.

DECISION NO. 69.

IN THE MATTER OF THE APPLICATION OF PACIFIC LIGHT AND POWER CORPORATION FOR PERMISSION TO CONTINUE DEVIATIONS FROM RATES.

Application No. 30.

Decided May 9, 1912.

REPORT OF THE COMMISSION.

Pacific Light and Power Corporation having heretofore filed with this Commission its application for permission to make the deviations from its published rates which were specified in the schedules of applicant filed with this Commission on the twenty-second day of April, 1912.

It is hereby ordered that permission to make said deviations be and the same is hereby granted until the further order of this Commission.

Dated at San Francisco, California, this 9th day of May, 1912.

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DECISION No. 70.

F. CAMES COMPANY ET AL.
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 226.

Decided May 9, 1912.

J. O. Bracken and *L. G. Burnett,* for complainants.
George D. Squires, for defendant.

SUPPLEMENTAL ORDER.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The decision of this Commission in the case entitled as above, rendered on January 29, 1912, reads in part as follows:

> "It was agreed between the parties at the hearing that they would get together upon the rendition of the decision and would agree upon the claims as to which reparation might be due under the terms of this decision. The parties will be expected to follow this procedure. In case they can not agree, it is directed that they come before the Commission again, whereupon the Commission will make a supplemental order specifically designating claims on which reparation is to be awarded under this decision."

In accordance with said declaration the Commission now makes its supplemental order designating the claims on which reparation is awarded under said decision. The Commission finds that excessive rates were collected by the defendant on carload shipments of horses, cattle, sheep and hogs moving for consignees and in amounts of overcharges as follows:

F. Cames Company	$17 98
Cames & Casalet	6 32
Grayson-Owen Company	3 06
William Taafe & Co.	14 35
H. Moffatt	100 99
J. B. Horan	15 30
Knierr, Allen & Pyle	1 35
Roth-Blum Packing Company	34 17
South San Francisco Packing & Provision Company	82 13
J. G. James Company	23 50

The shipments on which these overcharges are found are specified in "Statement of Claims for Reparation under Docket No. 226," on file in the case entitled as above.

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The Commission hereby finds the charges of defendant for said shipments to be excessive in the amounts hereinbefore specified, and said defendant is hereby ordered and directed to pay to the complainants the sum of two hundred and ninety-nine and 15/100 dollars ($299.15), with interest at the rate of seven (7) per cent per annum from the date of payment of said charges.

The above decision is hereby approved and ordered filed as the decision of this Commission.

San Francisco, California, May 9, 1912.

Decision No. 71.

PACIFIC CONSTRUCTION COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 245.

Decided May 9, 1912.

J. O. Bracken, for complainant.
George D. Squires, for defendant.

Report of the Commission.

Gordon, *Commissioner.*

This case involves shipment by complainant of six carloads tubular steel bridge piers from San Francisco to Tehama.

Complainant alleges that defendant assessed and collected charges on said shipments at the rate of 42 cents per 100 pounds (said rate being both fifth class and class A rate), with a carload minimum rate of 24,000 pounds, excepting one car on which a 30,000 pound minimum weight was used, whereas complainant alleges that they should have been charged and should have paid second class rate of 58 cents per 100 pounds on actual weight of said shipments, which they claim to have been 10,516 pounds to each car so shipped.

From the evidence adduced at the hearing it plainly appears that there was not a uniform weight of 10,516 pounds on each car, for according to the testimony of S. N. Bostwick, defendant's assistant general freight agent, the weight of the commodities shipped on said cars varied from 7,800 pounds to 20,150 pounds. It is also evident by the testimony that the cars were ordered by complainant and sent out

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by defendant at a point in their yards near King street between Sixth and Seventh streets, San Francisco, which point seemed to have been satisfactory to complainant, and at which point they themselves loaded six cars in controversy with the tubular steel bridge piers and billed same to Tehama without making any demand or request at the time of shipment that the movements were to be considered as L. C. L. shipments.

Therefore, it is the opinion of the Commission and the Commission hereby finds, that said movements were carload shipments and in accordance with Item 27, page 93, of Western Classification No. 48 C. R. C. No. 4, in effect at the time, this item named minimum carload weight of 30,000 pounds for each car. Rate of 42 cents per 100 pounds was the legal rate to be applied to said shipments.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1912.

DECISION No. 72.

IN THE MATTER OF THE APPLICATION OF SIERRA AND SAN FRANCISCO POWER COMPANY FOR PERMISSION TO COMPLETE THE CONSTRUCTION OF AN ELECTRIC TRANSMISSION LINE.

Application No. 13.

Decided May 11, 1912.

REPORT OF THE COMMISSION.

ESHLEMAN AND LOVELAND, *Commissioners.*

The applicant is the owner of a hydroelectric plant situated in the county of Tuolumne, and carries a transmission line from this plant to San Francisco and has tapped this transmission line at Alviso, Santa Clara County, and is carrying a branch line to Salinas, in Monterey County. The route to be covered by the branch lines passes through the cities of Morgan Hill and Gilroy, and also through the county of San Benito. A permit has been granted to the applicant by the municipal authorities of Gilroy to carry its lines through that municipality, but no franchise has been granted for the distribution of power therein. An application for a franchise is pending before the

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municipal authorities of Morgan Hill. An application has also been made to the supervisors of the county of San Benito for a franchise.

At the hearing the Coast Valleys Gas and Electric Company, which is the utility now operating in a part of the territory involved, appeared by its attorney, Mr. H. A. Van O. Torchiana, who expressed a willingness that a certificate be issued to the applicant provided it were merely for the construction of its line through Morgan Hill and Gilroy and not for the distribution of light and power therein.

After consideration of all the facts, we are of the opinion that a certificate should issue contingent upon the securing by the applicant of the necessary municipal and county permissions to construct its line through the cities of Morgan Hill and Gilroy, and also the county of San Benito. No permission, however, is granted, at this time, to distribute light or power within either of the two cities involved or the county of San Benito. As regards the city of Gilroy, the evidence shows that the city does not propose to permit the distribution of light and power by the applicant, and of course such disposition upon the part of the city of Gilroy disposes of the question of distribution within that city. Should the city authorities at some subsequent time desire to grant a franchise to the applicant to distribute light and power, then the Commission, on the proper application being made, will determine whether or not the public convenience and necessity would allow the applicant to enter such local field.

As regards the city of Morgan Hill, the Commission is not apprised of the attitude of the city authorities. If the city authorities there shall grant a franchise which would allow local distribution, then on the proper application, this Commission will determine whether or not the public convenience and necessity require the distribution of light and power in such municipality.

It does not appear from the evidence what portions of the county of San Benito, if any, are served by other utilities of the character of the applicant, and hence the permission herein merely gives the applicant the right to construct its line through said county contingent upon the necessary permit or franchise by the board of supervisors thereof. On proper application and showing of facts, the Commission will determine whether or not the local distribution of light or power by the applicant shall be permitted in the county of San Benito.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission.

Dated this 11th day of May, 1912.

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DECISION No. 73.

IN THE MATTER OF THE APPLICATION OF MT. WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING SPECIAL DEVIATIONS FROM METER POWER CONTRACT IN THE MATTER OF CONTRACT WITH CITY OF LINDSAY.

Application No. 42.

Decided May 13, 1912.

REPORT OF THE COMMISSION.

Mt. Whitney Power and Electric Company having heretofore filed with this Commission its application for permission to make a five (5) year meter power contract with the city of Lindsay, in Tulare County, for a fifteen (15) horsepower electric motor to be used on the sewer system of said city of Lindsay on the south half of the south half of the southeast quarter of the northeast quarter of section 3, township 20 south, range 26 east, M. D. B. and M. in Tulare County, in accordance with a meter power contract of said company, with the elimination of the provision of a minimum monthly charge of installed motor capacity.

It is hereby ordered that said application be and the same is hereby granted until the further order of this Commission.

Dated at San Francisco, California, this 13th day of May, 1912.

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DECISION NO. 74.

GEORGE A. LONG ET AL.
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 127.

Decided May 11, 1912.

Inquiry on the Commission's own motion into the reasonableness of the class and commodity rates between intermediate points on the line of the Southern Pacific and the line of respondent between Los Angeles and Calexico.

Held, That all the class rates and certain commodity rates for which lower rates are prescribed in the schedules of rates set out herein are excessive, unjust and unreasonable. New schedule prescribed.

F. C. Farr, for complainants.

C. W. Durbrow and *George D. Squires*, for defendants.

REPORT OF THE COMMISSION.

This is an action brought by various shippers and receivers of freight into and out of the Imperial Valley, California, directed against the Southern Pacific Company, the Inter-California Railway Company and the Holton Interurban Railway Company. At the time of the trial, the complaint against the Holton Interurban Railway Company was withdrawn and by consent the complaint was dismissed. The Inter-California Railway Company is a subsidiary corporation of the Southern Pacific Company, the property being leased and operated by the Southern Pacific Company, and all the tariffs and rates are issued in its name.

It became apparent at the first hearing of the case on December 13, 1911, that any adjustment in rates between Los Angeles and Imperial Valley points would automatically affect rates from and to intermediate points under the provisions of section 21 of article XII of the Constitution of this State, and that it would either be necessary for the Commission in this hearing to call in question such intermediate rates, or, in the event changes were ordered in the rates attacked in the complaint, thereafter, under the provisions of the section of the Constitution just cited, to require the carriers to justify the intermediate rates which might be rendered discriminatory by the decision in this case. In order to obviate any difficulty of this kind and to dispose of the entire matter at one hearing, the Commission by order, on December 26, 1911, called in question and initiated an inquiry into the reasonableness of the class and commodity rates between intermediate points on the line of the

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Southern Pacific between Los Angeles and Calexico, and continued the case in order that the defendants might have the time prescribed by law in which to meet these new issues.

After consideration of all the evidence, the Commission is of the opinion that the complaint is justified and finds as a fact, that all the class rates and the certain commodity rates for which lower rates are prescribed in the schedules of rates set out herein are excessive, unjust and unreasonable. A schedule of class rates marked "Schedule No. 1" and a schedule of commodity rates marked "Schedule No. 2" are attached hereto and made a part hereof, and the rates set out therein are found to be just and reasonable rates to be charged and collected by the Southern Pacific Company and the Inter-California Railway Company for the transportation of freight between the points specified in said schedules of rates. The rates set out herein are established as the maximum to be charged between any two points which are intermediate to points between which rates are herein established, and the defendant's attention is directed to the provisions of article XII, section 21 of the Constitution of this State preventing the charging of a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer, and also to that portion of the same section preventing the charging of any greater compensation as a through rate than the aggregate of the intermediate rates, and likewise to article XII, section 20 of the Constitution preventing the increase of any rates without permission of the Railroad Commission.

The schedules of rates following are hereby established by the Railroad Commission to become effective on the twelfth day of June, 1912, and before such time the carriers are instructed to present to this Commission and to distribute, as required by law, printed copies of such schedules.

Dated this 14th day of May, 1912.

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SCHEDULE No. 1.

Between LOS ANGELES, CAL., and	Class rates in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Rimlon, Cal.	59	50	41	37	31	31	24	18	15	12
Edom, Cal.	61	52	43	38	32	32	24	18	15	12
Dry Camp, Cal.	62	53	43	39	33	33	25	19	16	12
Myoma, Cal.	64	54	45	40	34	34	26	19	16	13
Indio, Cal.	66	56	46	41	35	35	26	20	17	13
Coachella, Cal.	68	58	48	43	36	36	27	20	17	14
Thermal, Cal.	70	60	49	44	37	37	28	21	18	14
Durbrow, Cal.	71	60	50	44	37	37	28	21	18	14
Mecca, Cal.	72	61	50	45	38	38	29	22	18	14
Caleb, Cal.	73	62	51	46	38	38	29	22	18	15
Mortmere, Cal.	75	64	53	47	39	39	30	23	19	15
Salton, Cal.	76	65	53	48	40	40	30	23	19	15
Durmid, Cal.	80	68	56	50	42	42	32	24	20	16
Bertram, Cal.	81	69	57	51	43	43	32	24	21	16
Pope, Cal.	83	71	58	52	44	44	33	25	21	17
Frink, Cal.	84	71	59	53	44	44	34	25	21	17
Lano, Cal.	86	73	60	54	45	45	34	26	22	17
Mundo, Cal.	87	74	61	54	46	46	35	26	22	17
Imperial Junction, Cal.	88	75	62	55	46	46	35	26	22	18
Estelle, Cal.	89	76	62	56	47	47	36	27	22	18
Bernice, Cal.	90	77	63	56	47	47	36	27	23	18
Rockwood, Cal.	90	77	63	56	47	47	36	27	23	18
Hovely, Cal.	91	77	64	57	48	48	36	27	23	18
Brawley, Cal.	91	77	64	57	48	48	36	27	23	18
Keystone, Cal.	91	77	64	57	48	48	36	27	23	18
Imperial, Cal.	92	78	64	58	48	48	37	28	23	18
El Centro, Cal.	93	79	65	58	49	49	37	28	23	19
Heber, Cal.	94	80	66	59	49	49	38	28	24	19
Calexico, Cal.	95	81	67	59	50	50	38	29	24	19

SCHEDULE No. 2.

Brick, carloads, minimum weight 40,000 pounds.

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Rimlon, Cal.	230	Frink, Cal.	290
Edom, Cal.	240	Lano, Cal.	290
Dry Camp, Cal.	240	Mundo, Cal.	290
Myoma, Cal.	240	Imperial Junction, Cal.	300
Indio, Cal.	240	Estelle, Cal.	310
Coachella, Cal.	250	Bernice, Cal.	310
Thermal, Cal.	250	Rockwood, Cal.	310
Durbrow, Cal.	250	Hovely, Cal.	310
Mecca, Cal.	250	Brawley, Cal.	310
Caleb, Cal.	260	Keystone, Cal.	315
Mortmere, Cal.	260	Imperial, Cal.	315
Salton, Cal.	260	El Centro, Cal.	315
Durmid, Cal.	275	Heber, Cal.	320
Bertram, Cal.	275	Calexico, Cal.	325
Pope, Cal.	275		

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SCHEDULE No. 2—Continued.

Cement, Lime and Plaster, straight carloads, minimum weight.

(Cement, 50,000 pounds; lime, 30,000 pounds; plaster, 50,000 pounds.)

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Rimlon, Cal.	305	Frink, Cal.	390
Edom, Cal.	305	Lano, Cal.	390
Dry Camp, Cal.	305	Mundo, Cal.	400
Myoma, Cal.	320	Imperial Junction, Cal.	400
Indio, Cal.	320	Estelle, Cal.	410
Coachella, Cal.	320	Bernice, Cal.	420
Thermal, Cal.	335	Rockwood, Cal.	430
Durbrow, Cal.	335	Hovely, Cal.	440
Mecca, Cal.	335	Brawley, Cal.	450
Caleb, Cal.	350	Keystone, Cal.	460
Mortmere, Cal.	350	Imperial, Cal.	470
Salton, Cal.	365	El Centro, Cal.	480
Durmid, Cal.	365	Heber, Cal.	490
Bertram, Cal.	380	Calexico, Cal.	500
Pope, Cal.	380		

SCHEDULE No. 2—Continued.

Fruit, Fresh, carloads.

Minimum weight 24,000 pounds.

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Estelle, Cal.	480	Keystone, Cal.	490
Bernice, Cal.	480	Imperial, Cal.	490
Rockwood, Cal.	480	El Centro, Cal.	490
Hovely, Cal.	480	Heber, Cal.	500
Brawley, Cal.	480	Calexico, Cal.	500

SCHEDULE No. 2—Continued.

Melons, carloads.

Minimum weight 24,000 pounds.

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Estelle, Cal.	400	Keystone, Cal.	400
Bernice, Cal.	400	Imperial, Cal.	400
Rockwood, Cal.	400	El Centro, Cal.	400
Hovely, Cal.	400	Heber, Cal.	400
Brawley, Cal.	400	Calexico, Cal.	400

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SCHEDULE No. 2—Continued.

Flour, Cereals and Cereal Products, carloads, as described in Southern Pacific Company's tariff C.R.C. 805, minimum weight 30,000 pounds.

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Rimlon, Cal.	410	Frink, Cal.	475
Edom, Cal.	410	Lano, Cal.	485
Dry Camp, Cal.	415	Mundo, Cal.	485
Myoma, Cal.	415	Imperial Junction, Cal.	500
Indio, Cal.	420	Estelle, Cal.	515
Coachella, Cal.	420	Bernice, Cal.	530
Thermal, Cal.	425	Rockwood, Cal.	540
Durbrow, Cal.	425	Hovely, Cal.	550
Mecca, Cal.	435	Brawley, Cal.	560
Caleb, Cal.	435	Keystone, Cal.	570
Mortmere, Cal.	450	Imperial, Cal.	585
Salton, Cal.	450	El Centro, Cal.	595
Durmid, Cal.	465	Heber, Cal.	610
Bertram, Cal.	465	Calexico, Cal.	625
Pope, Cal.	475		

SCHEDULE No. 2—Continued.

Grain and Grain Products, carloads, as described in Southern Pacific Company's tariff C.R.C. 102, minimum weight 30,000 pounds.

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Mundo, Cal.	300	Brawley, Cal.	320
Imperial Junction, Cal.	300	Keystone, Cal.	330
Estelle, Cal.	310	Imperial, Cal.	335
Bernice, Cal.	310	El Centro, Cal.	340
Rockwood, Cal.	310	Heber, Cal.	350
Hovely, Cal.	320	Calexico, Cal.	360

SCHEDULE No. 2—Continued.

Hay and Straw, carloads, minimum weight as provided in Southern Pacific Company's tariff C.R.C. 550.

Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.	Between LOS ANGELES, CAL., and	Rates in cents per ton of 2,000 pounds.
Rimlon, Cal.	300	Mortmere, Cal.	300
Edom, Cal.	300	Salton, Cal.	300
Dry Camp, Cal.	300	Durmid, Cal.	300
Myoma, Cal.	300	Bertram, Cal.	300
Indio, Cal.	300	Pope, Cal.	300
Coachella, Cal.	300	Frink, Cal.	300
Thermal, Cal.	300	Lano, Cal.	300
Durbrow, Cal.	300	Mundo, Cal.	300
Mecca, Cal.	300	Imperial Junction, Cal.	300
Caleb, Cal.	300		

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SCHEDULE No. 2—Continued.

Ice, carloads, minimum weight 30,000 pounds.

From LOS ANGELES, CAL., to	Rates in cents per ton of 2,000 pounds.	From LOS ANGELES, CAL., to	Rates in cents per ton of 2,000 pounds.
Durbrow, Cal.	225	Imperial Junction, Cal.	275
Mecca, Cal.	225	Estelle, Cal.	300
Caleb, Cal.	250	Bernice, Cal.	300
Mortmere, Cal.	250	Rockwood, Cal.	300
Salton, Cal.	250	Hovely, Cal.	300
Durmid, Cal.	250	Brawley, Cal.	300
Bertram, Cal.	275	Keystone, Cal.	300
Pope, Cal.	275	Imperial, Cal.	300
Frink, Cal.	275	El Centro, Cal.	300
Lano, Cal.	275	Heber, Cal.	300
Mundo, Cal.	275	Calexico, Cal.	300

SCHEDULE No. 2—Continued.

Live Stock, carloads.

Between LOS ANGELES, CAL., and	Rates in dollars per 30-foot car.		
	Horses, mules, burros, donkeys, jacks.	Cattle.	Sheep, hogs, goats.
Rimlon, Cal.	$47 00	$43 00	$32 25
Edom, Cal.	47 00	44 50	33 50
Dry Camp, Cal.	47 00	44 50	33 50
Myoma, Cal.	47 00	44 50	33 50
Indio, Cal.	50 50	46 00	34 50
Coachella, Cal.	50 50	46 00	34 50
Thermal, Cal.	50 50	46 00	34 50
Durbrow, Cal.	55 00	48 00	36 00
Mecca, Cal.	55 00	48 00	36 00
Caleb, Cal.	55 00	48 00	36 00
Mortmere, Cal.	55 00	50 00	37 50
Salton, Cal.	55 00	50 00	37 50
Durmid, Cal.	55 00	50 00	37 50
Bertram, Cal.	58 00	53 00	40 00
Pope, Cal.	58 00	53 00	40 00
Frink, Cal.	58 00	53 00	40 00
Lano, Cal.	62 00	55 00	41 50
Mundo, Cal.	62 00	55 00	41 50
Imperial Junction, Cal.	62 00	55 00	41 50
Estelle, Cal.	66 00	56 00	42 00
Rockwood, Cal.	66 00	56 00	42 00
Hovely, Cal.	68 50	57 00	43 00
Brawley, Cal.	68 50	57 00	43 00
Keystone, Cal.	68 50	57 00	43 00
Imperial, Cal.	70 00	58 00	43 50
El Centro, Cal.	70 00	58 00	43 50
Heber, Cal.	71 00	59 00	44 50
Calexico, Cal.	72 00	60 00	45 00

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SCHEDULE No. 2—Continued.

Lumber and its products, carloads, as described in Southern Pacific Company's tariff C.R.C. 699.

From LOS ANGELES, CAL., to	Rates in cents per ton of 2,000 pounds.	From LOS ANGELES, CAL., to	Rates in cents per ton of 2,000 pounds.
Rimlon, Cal.	430	Frink, Cal.	490
Edom, Cal.	430	Lano, Cal.	490
Dry Camp, Cal.	430	Mundo, Cal.	500
Myoma, Cal.	445	Imperial Junction, Cal.	500
Indio, Cal.	445	Estelle, Cal.	510
Coachella, Cal.	460	Bernice, Cal.	520
Thermal, Cal.	460	Rockwood, Cal.	530
Durbrow, Cal.	460	Hovely, Cal.	540
Mecca, Cal.	460	Brawley, Cal.	550
Caleb, Cal.	470	Keystone, Cal.	560
Mortmere, Cal.	470	Imperial, Cal.	570
Salton, Cal.	480	El Centro, Cal.	580
Durmid, Cal.	480	Heber, Cal.	590
Bertram, Cal.	480	Calexico, Cal.	600
Pope, Cal.	490		

SCHEDULE No. 2—Continued.

Oil, Petroleum Crude Oil; Petroleum Road Oil, Petroleum Oil Residuum; also Fuel Oil, viz.: Refinery Residuum, carloads, minimum weight, in packages 26,000 pounds.

From LOS ANGELES, CAL., to	Rates in cents per ton of 2,000 pounds.	From LOS ANGELES, CAL., to	Rates in cents per ton of 2,000 pounds.
Imperial Junction, Cal.	400	Keystone, Cal.	430
Estelle, Cal.	410	Imperial, Cal.	430
Bernice, Cal.	410	El Centro, Cal.	440
Rockwood, Cal.	420	Heber, Cal.	450
Hovely, Cal.	420	Calexico, Cal.	450
Brawley, Cal.	420		

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DECISION No. 75.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION FOR BLINN ESTATE COMPANY OF A SPUR TRACK ON AND ACROSS SECOND AND BRANNAN STREETS, SAN FRANCISCO, CALIFORNIA, AND ALSO CROSSING THE TRACKS OF THE UNITED RAILROADS, BOTH CROSSINGS BEING AT GRADE.

Application No. 6.

Decided May 15, 1912.

F. W. Hoover, for the Southern Pacific Company.
George N. Didion, attorney for Blinn Estate Company.
Frank L. Blinn, secretary Blinn Estate Company.
A. L. Hornlein, engineer Blinn Estate Company.
W. D. Chamberlain, assistant engineer United Railroads.

REPORT OF THE COMMISSION.

LOVELAND and THELEN, *Commissioners.*

It appearing from the testimony submitted at the hearing of this application that the city and county of San Francisco, California, had on June 12, 1911, granted permission to the Blinn Estate Company to construct, maintain and operate a spur track from a point on Second street, one hundred seventy-five (175) feet, more or less, south to the southern line of Brannan street; thence continuing easterly on a curve to the left, sixty (60) feet, more or less; thence by a reverse curve to the west, crossing Brannan street, to and into the property of the Blinn Estate Company, copy of which permission was filed with the Commission and the United Railroads having appeared and waived any objection to the construction, maintenance and operation of said spur track across its said railroad, subject to the conditions hereinafter specified, the application of the Southern Pacific Company to construct said spur track for the Blinn Estate Company is hereby granted, to become effective when an agreement between the Southern Pacific Company and the United Railroads has been executed, embodying and comprehending the following conditions recommended by the Chief Engineer of the Commission who had examined the situation at the request of the Commission.

1. That the Southern Pacific Company furnish, install and hereafter maintain in good serviceable condition, the necessary

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frogs for the crossings with the United Railroad tracks in Brannan street.

2. That the Southern Pacific Company stand the expense necessary for reconstructing the present tracks of the United Railroads to fit these crossings.

3. That the Southern Pacific Company agrees to operate cars over said spur track only between the hours of 6 p. m. and 8 a. m.

The Commission reserves the right to revoke said permission as to this crossing whenever, in its judgment, public necessity demands such revocation and also reserves the right to require said applicant to install and maintain such safety appliances and provide such means to insure the safety of the public as the Commission may consider necessary.

Under these conditions and with this understanding, the application is hereby granted.

The above order is hereby approved and ordered filed as the decision of this Commission.

Dated at San Francisco, California, this 15th day of May, 1912.

DECISION NO. 76.

IN THE MATTER OF THE APPLICATION OF COAST VALLEYS GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE PURCHASE BY COAST VALLEYS GAS AND ELECTRIC COMPANY OF ALL THE ISSUED CAPITAL STOCK OF KING CITY WATER, LIGHT AND POWER COMPANY.

Application No. 9.

Decided May 17, 1912.

Held. That the approval of this application is not to be deemed to establish the value of properties permitted to be transferred, for rate fixing or any other purpose, before the Commission or any other public authority, and that this decision is confined to the testimony in the case and applicant's prayer therein.

George H. Whipple, of Chickering and Gregory, and
H. F. Jackson, for applicants.
L. B. Urey, for King City Water, Light and Power Company.
The City Trustees, for King City.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application by Coast Valleys Gas and Electric Company, hereinafter referred to as the Coast Valleys Company, for an order of the Railroad Commission authorizing the purchase by the Coast Valleys Company of the entire issued capital stock of King City Water, Light and Power Company, hereinafter referred to as the King City Company, for $41,200 in cash.

The King City Company was incorporated on July 12, 1908, and since May, 1909, has been supplying electricity and water within the limits of King City, Monterey County, California. The authorized capital stock is 2,000 shares of the par value of $25 each, whereof 941 shares have been issued. The company operates a steam generating plant and gives a sundown to sunup electricity service. It furnishes no electricity for use during the daytime. The company supplies some 130 persons with electricity and a few less with water.

It appears from the testimony and from investigation among the citizens of King City that it would be desirable to have applicant purchase the stock of the local company and then to introduce into King City its hydroelectric power so that the city may have electricity for use both during the day and at night. In the event that the purchase is consummated, the service of the present plant will be supplemented by applicant's hydroelectric power transmitted from its plant in Tuolumne County. There is also reason to believe that the entrance of the applicant into the field, with its hydroelectric power, will make possible a reduction of the present rate of 15 cents per kilowatt hour for electricity. I find that the public convenience and necessity of the people of King City and vicinity will be subserved by the granting of this application.

There is considerable testimony in the case concerning the value of the property of the King City Company. A. G. Wishon on March 21, 1912, paid $10,000, and agreed to pay to L. B. Ulrey and E. W. Kirk an additional $30,000 for the entire issued capital stock of the company, making a total of $40,000. L. B. Ulrey testified that the value of the plant, disregarding interest, taxes and insurance during construction, loss during the first year of operation and going concern value, was $39,817.30. Applicant's engineer, when instructed to ascertain the value of the plant prior to applicant's contract of purchase, reported that its physical property is worth $41,750. H. F. Jackson testified that in his opinion the value of the property is about $42,000. Applicant's Exhibit "C," prepared by its auditor from the books of the King City Company, shows an actual expenditure for plant and equipment, without any duplication, of $35,040.15, to which Mr. Ulrey adds

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$4,500 for securing the original franchise from Monterey County and incorporation and promotion expenses, making a total of $39,540.15.

In view of this testimony and after a personal inspection of the plant, I am of the opinion that the application should be granted without an independent valuation by the Railroad Commission. It should be distinctly understood, however, that the granting of this application is not to be deemed to establish the value of the King City Company's plant, for rate fixing or any other purpose, before the Railroad Commission or any other public authority, and that this decision is confined to the testimony in this case and applicant's prayer therein.

While I have reached the conclusion from facts as shown at the hearing that the application should be granted, I think it incumbent upon me to draw attention to the fact that the petition, although verified, does not state the truth in important particulars. For instance, the petition alleges that the authorized capital stock of the King City Company is 2,000 shares of the par value of $100 each, whereas it appears that the par value is only $25. Again, the petition states that the difference between the sum of $41,200, which applicant agreed to pay for the capital stock, and $30,000, the amount specified in agreement between L. B. Ulrey and E. W. Kirk to be paid by A. G. Wishon for the stock, "is represented by expenditures upon and betterments made to said plant since the execution of said agreement of March 21, 1912," whereas the testimony shows that $10,000 of this amount is represented by an initial payment made by Mr. Wishon to Ulrey and Kirk on March 21, 1912, concerning which the petition says nothing, and $1,200 apparently by Wishon's gross profit on the transaction. Again, the balance sheet of the King City Company which is attached to the application and marked Exhibit "C," does not correctly represent the financial condition of the company. While the real facts were elicited at the hearing, the attention of public utilities should be drawn to the possibility that their applications may be denied unless they correctly represent the facts.

The application is hereby granted.

The foregoing opinion is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of May, 1912.

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DECISION NO. 77.

IN THE MATTER OF THE APPLICATION OF HIRAM S. ROACH, AN ELECTRICAL CORPORATION, AND OF THE SOUTHERN SIERRAS POWER COMPANY, AN ELECTRICAL CORPORATION, FOR AN ORDER AUTHORIZING THE SALE AND TRANSFER BY THE SAID HIRAM S. ROACH TO THE SAID THE SOUTHERN SIERRAS POWER COMPANY, OF A CERTAIN ELECTRICAL PLANT OR SYSTEM AND PROPERTY AT SAN JACINTO, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

Application No. 26.

Decided May 24, 1912.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application joined in by Hiram S. Roach and the Southern Sierras Power Company, by which Mr. Roach asks permission to sell and the power company to purchase an electric distributing system in the town of San Jacinto, county of Riverside, California, for a consideration of $9,500 cash and $1,000 worth of electric power.

Mr. Roach is sole owner of this electric distributing plant, and he is now generating the electricity therefor by a gasoline engine and an electrical generator, the engine and generator not being included in the property to be sold.

It is evident that Mr. Roach has been unable to furnish a twenty-four-hour service in San Jacinto, and there is strong demand for such service. While he has been able to furnish all customers who applied for service, if the town increases in size to any considerable extent, he would be called upon to increase his plant, which would necessitate the investment of more capital, and this, he declares, he is unable to do.

Furthermore, the generation of electricity by such a small plant is more costly than the production of electricity by a hydroelectric plant such as is proposed to be operated by the Southern Sierras Power Company. And there is no doubt that this power company is in a position to furnish electricity more efficiently and cheaper to the inhabitants of San Jacinto than Mr. Roach is, or will be, able to do. It is clear that it is to the advantage of the citizens of San Jacinto that the Southern Sierras Power Company be allowed to take over Mr. Roach's plant and operate it, and the only difficulty arises in that it appears from the

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testimony that Mr. Roach is selling this plant at a considerably advanced price over its cost. He admits to a profit of about $1,900. This price of $9,500 cash and $1,000 worth of electric power, to be delivered later to Mr. Roach by the purchaser, is not here found or held to be the real value of said plant.

Apparently part of the consideration moving from Mr. Roach to this company is his agreement to exchange two $1,000 first mortgage bonds to the Lytle Creek Power Company (said Lytle Creek Power Company now belongs to said Southern Sierras Power Company), receiving therefor either $2,000 in cash or two $1,000 first mortgage bonds of the Southern Sierras Power Company, and while this latter transaction is apparently only an exchange of bonds or a sale of bonds for cash, still it is named as part of the consideration for the whole transaction, and as there is nothing to show that the Southern Sierras Power Company bonds to be delivered to Mr. Roach have been issued, the order made by this Commission shall not be construed as an authorization for the issuance of any bonds not heretofore authorized to be issued by this Commission.

The application should be granted and an order issued authorizing said transfer of property to be made.

An order based on the above conclusions is submitted herewith.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 24th day of May, 1912.

It is hereby ordered that Hiram S. Roach be and he is hereby authorized to sell to the Southern Sierras Power Company, a corporation, which is hereby authorized to purchase, that certain electrical distributing plant located in the town of San Jacinto, county of Riverside, California, said system including equipment, lines, poles, and appurtenances through which the citizens of said town and vicinity are now being supplied with electric current for light and power, the price or consideration moving from said Southern Sierras Power Company to Hiram R. Roach for the transfer of said electric lighting system to be not in excess of $10,500.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission.

Dated at San Francisco, this 24th day of May, 1912.

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DECISION NO. 78.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF ITS BONDS SECURED BY TRUST INDENTURE TO THE AMOUNT OF FOUR MILLION ONE HUNDRED AND SEVENTEEN THOUSAND DOLLARS, AND THE EXCHANGE OF SAID BONDS FOR BONDS ISSUED AND OUTSTANDING, SECURED BY UNDERLYING MORTGAGES UPON THE PROPERTIES OF SOUTHERN CALIFORNIA EDISON COMPANY.

Application No. 34.

Decided May 21, 1912.

REPORT OF THE COMMISSION.

It is hereby ordered, 1. That Southern California Edison Company be and it is hereby authorized to issue any of its bonds, Nos. 4960 to 10,296, both numbers inclusive, under that certain trust indenture from Southern California Edison Company to Harris Trust and Savings Bank and Los Angeles Trust and Savings Bank, trustees, dated November 1, 1909, to the amount of $4,117,000, in the denomination of $1,000 each; said bonds to bear date November 1, 1909, and to be payable thirty years from their date, and to bear interest at the rate of 5 per cent per annum, payable semi-annually.

Ordered, 2. That said bonds shall be used for the following purposes only: They may be exchanged from time to time as and when such exchanges can be effected by said Southern California Edison Company for an equal amount of the par value of the following described bonds, viz.:

(*a*) Bonds to the amount of $3,507,000 par value, issued under a mortgage or deed of trust from The Edison Electric Company, a corporation of the state of Wyoming, dated September 1, 1902, to the Los Angeles Trust Company, trustee, and United States Mortgage and Trust Company, co-trustee, said bonds bearing date September 1, 1902, due September 1, 1922, and bearing interest at the rate of 5 per cent per annum;

(*b*) Bonds to the amount of $48,000 par value, issued under a mortgage or deed of trust from Edison Electric Company, a corporation of the State of California, dated December 2, 1897, to the Title Insurance and Trust Company of Los Angeles, trustee, said bonds bearing date

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December 2, 1897, due December 2, 1927, bearing interest at the rate of 6 per cent per annum;

(*c*) Bonds to the amount of $391,000 par value, issued under a mortgage or deed of trust from Edison Electric Company, a corporation of the State of California, dated September 1, 1899, to the Title Insurance and Trust Company of Los Angeles, trustee, said bonds bearing date September 1, 1899, due September 1, 1929, bearing interest at the rate of 5 per cent per annum;

(*d*) Bonds to the amount of $15,000 par value, issued under a mortgage or deed of trust from Southern California Power Company, dated July 31, 1897, to the Title Insurance and Trust Company of Los Angeles, trustee, said bonds bearing date July 31, 1897, due August 1, 1927, at the rate of 6 per cent per annum;

(*e*) Bonds to the amount of $139,000 par value, issued under mortgage or deed of trust from United Electric, Gas and Power Company, dated December 1, 1900, to Broadway Bank and Trust Company of Los Angeles, trustee, said bonds bearing date December 1, 1900, due December 1, 1920, bearing interest at the rate of 5 per cent per annum;

(*f*) Bonds to the amount of $17,000 par value, issued under a mortgage or deed of trust from Pomona and Ontario Light and Fuel Company, dated June 1, 1902, to Union Trust Company of San Francisco, trustee, said bonds bearing date June 1, 1902, due June 1, 1922, bearing interest at the rate of 5 per cent per annum.

Ordered, 3. That said bonds of Southern California Edison Company, amounting to $4,117,000 par value, shall not be used for any purpose other than that hereinbefore specified, and that when said underlying bonds hereinbefore mentioned are received in exchange for said bonds of Southern California Edison Company from time to time, said underlying bonds shall be deposited with and held by said Harris Trust and Savings Bank, trustee, under and in accordance with the terms of said trust indenture from Southern California Edison Company to Harris Trust and Savings Bank and Los Angeles Trust and Savings Bank, trustee, dated November 1, 1909.

Dated at San Francisco, California, this 24th day of May, 1912.

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DECISION NO. 79.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK CROSSING A PUBLIC HIGHWAY, NAMELY, PARKER STREET, IN THE CITY OF BERKELEY, CALIFORNIA, SAID CROSSING TO BE AT GRADE.

Application No. 40.

Decided May 24, 1912.

E. H. Miller, for the Southern Pacific Company.
C. Hoff and *E. Q. Turner*, councilmen, for the city of Berkeley.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The applicant having filed with the Commission copy of permission granted by the city of Berkeley to construct spur track and cross said street, Mr. R. A. Thompson, Chief Engineer of the Commission, having reported favorably upon the application, after an investigation, and Councilmen Hoff and Turner appearing and assuring the Commission that there was no one to protest against the granting of this application, the same is hereby granted, subject to the conditions named by the municipal authorities of Berkeley, in the permission above referred to, the Commission, however, reserving the right to revoke said permission as to this crossing whenever, in its judgment, public necessity demands such revocation, and also reserves the right to require said applicant to install and maintain such safety appliances and provide such names to insure the safety of the public as the Commission may consider necessary.

The above order is hereby approved and ordered filed as the decision of the Railroad Commission.

Dated at San Francisco, California, this 24th day of May, 1912.

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DECISION NO. 80.

IN THE MATTER OF THE APPLICATION OF MOUNT WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING MODIFIED METER CONTRACT UNDER CERTAIN CONDITIONS.

Application No. 60.

Decided May 24, 1912.

REPORT OF THE COMMISSION.

Mount Whitney Power and Electric Company having heretofore filed with this Commission its application for permission to use a modified form of its meter contract where the consumer desires the same, in instances where two or more motors are so installed that one meter may measure all current consumed, and such motors may be so installed that measurement of electric current may be made on the primary side of the transformers used, and in such instances the charges at meter contract rates shall be based on the aggregate capacity of the motors connected and so measured,

It is hereby ordered that said application be and the same is hereby granted until the further order of this Commission.

Dated at San Francisco, California, this 24th day of May, 1912.

DECISION NO. 81.

HENDERSON-LONGTON COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 260.

Decided May 24, 1912.

Held. That it is contrary to public policy to have voluntary reductions in rates by carriers followed by claims for reparation where such claims are based upon the voluntary reduction.

Held. In view of the fact that respondent's chief competitor had charged 15 cents per hundred pounds on celery in crates on less than carload shipments, whereas, the rate of respondent prior to the voluntary reduction was 22 cents, that said 15-cent rate is reasonable.

G. J. Bradley, for complainant.
George D. Squires, for defendant.

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REPORT OF THE COMMISSION.

LOVELAND and GORDON, *Commissioners.*

In this action complainant asks that a rate of 22 cents per hundred pounds on celery in crates, in less-than-carload quantities, from different points or landings on the Sacramento River to Sacramento, California, heretofore charged by the defendant Southern Pacific Company on certain shipments, seventy-nine freight bills for which were filed as an exhibit for complainant, be declared unreasonable, and that reparation in the sum of 7 cents per hundred pounds be awarded to complainant on each of said shipments represented by said seventy-nine freight bills, the total reparation asked for being thirty-five dollars and seventy-two cents ($35.72).

In support of its contention that the said rate of 22 cents per hundred pounds was unreasonably high and extortionate, complainant submitted evidence showing

(1) That the California Navigation Company, the principal competitor of the defendant Southern Pacific Company, had for some time a rate in effect between the points comprehended in this case of 15 cents per hundred pounds on celery in crates on less-than-carload shipments.

(2) That the defendant Southern Pacific Company has now, and for some time has had, a rate in effect on celery in crates in car lots between the points mentioned of 6½ cents per hundred pounds, and complainant maintains that the voluntary establishment by defendant of said carload rate of 6½ cents per hundred pounds supports and justifies its contention that 22 cents per hundred pounds is an unreasonably high less-than-carload rate.

(3) That when its attention was called to the fact by complainant that its chief competitor, the California Navigation Company, was charging but 15 cents per hundred pounds for the service in question, to wit, on movement of celery in crates, in less-than-carload quantities, between points named herein, the defendant Southern Pacific Company voluntarily reduced its rate to 15 cents per hundred pounds.

Defendant did not controvert complainant's testimony as to rate charged by the California Navigation Company, and admitted that it carried in its tariffs a carload rate on celery in crates between points mentioned of 6½ cents per hundred pounds, and that it had voluntarily reduced its rate to 15 cents per hundred pounds for service in question when requested to do so by complainant's attorney, but maintained that the said rate of 15 cents per hundred pounds was an unreasonably low rate induced by severe competition, and that said rate of 22 cents per hundred pounds was a fair and reasonable rate for the service in question.

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Defendant further contended that a voluntary reduction in rates by a transportation company was not conclusive evidence that the former rate was unreasonable or extortionate and cited the following decisions of the Interstate Commerce Commission in support of such contention, from one of which we quote (*Stockyards, etc.* vs. *M. K. & T. R. R.*, 17 I. C. C. 295):

> "We have said many times that the voluntary reduction of a rate by a carrier, with no other evidence of its unreasonableness except the fact that a lower rate is at present in existence, does not present a case where reparation should be awarded."
>
> See, also: *Ottumwa Bridge Co.*, 14 I. C. C. 121; *Commercial Coal Co.* vs. *B. & O.*, 15 I. C. C. 11; *Wabash Coating Mills* vs. *W. R. R.*, 18 I. C. C. 91; *G. & A. Lumber Co.* vs. *C. & G. W. Ry.*, 18 I. C. C. 599.
>
> See, also: *Pueblo Transportation Assn.* vs. *S. P. Co.*, 14 I. C. C. 82; *Wood Mosaic Co.* vs. *L. & N.*, 22 I. C. C. 458; *In re Through Routes*, 12 I. C. C. 164; Barnes Interstate Transportation, sections 89 and 503; Conference Ruling, 205 I. C. C.; also: *Pignaz* vs. *Burnett*, 119 Cal. 157; *Ex parte Sparks*, 120 Cal. 395.

With this contention and with these decisions, in so far as they relate to this contention, this Commission is in accord, for the reason as expressed by Interstate Commerce Commissioner Lane in the case of the *Foster Lumber Company* vs. *A. T. & S. F. Ry. Co.*, 15 I. C. C. 56:

> * * * "It must be apparent that it is to the interest of the shipping public in no wise to embarrass carriers in decreasing rates when they think such decrease equitable. Under existing standards, all will admit that there can be a wide divergence of opinion as to what a reasonable rate between two points may be and any policy pursued by this Commission tending to make it burdensome to the carriers to reduce a rate would in the end work a hardship to shippers." * * *

We believe that this is the correct view and that it is contrary to public policy to have voluntary reductions in rates by carriers followed by claims for reparation where such claims are based upon the voluntary reduction.

In this particular case, we can not be unmindful of other circumstances presented by complainant in support of its contention that said rate of 22 cents per hundred was unreasonable, viz, the fact that the defendant Southern Pacific Company charged but 6¼ cents per hundred pounds on celery in car lots and that the California Navigation Company had for some considerable time carried this commodity between points involved at 15 cents per hundred.

It is therefore held that the rate of 15 cents per hundred pounds for this service is at least a reasonable rate and the defendant Southern

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Pacific Company is ordered to pay to complainant 7 cents per hundred on the shipments mentioned, the total amount of such reparation being, as prayed for in complaint, thirty-five dollars and seventy-two cents ($35.72).

The foregoing order is hereby approved and ordered filed as the decision of the Railroad Commission.

Dated at San Francisco, California, this 24th day of May, 1912.

DECISION NO. 82.

IN THE MATTER OF THE APPLICATION OF AMERICAN EXPRESS COMPANY, GLOBE EXPRESS COMPANY AND WELLS FARGO & COMPANY EXPRESS, BY THEIR AGENT, F. G. AIRY, FOR PERMISSION TO AMEND THE CLASSIFICATION OF FRUIT, GREEN, IN GAUZE OR CLOTH COVERED BASKETS.

Application No. 45.

Decided May 27, 1912.

Held, That fruit packed in gauze or cloth covered baskets should take higher rate than fruit packed in closed crates, because it would be impossible to carry fruit safely where it was piled in tiers with the tops of the baskets unprotected, and the carrier would be compelled either to carry a smaller number of tiers or else risk injury to the fruit.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application of the American Express Company, the Globe Express Company and Wells Fargo & Company Express, through their agent, F. G. Airy, for permission to increase rates on green fruit in gauze or cloth covered baskets by changing their tariff so that such fruit will move under merchandise rates instead of general special rates. It is evident from testimony introduced in the hearing in this matter that there is no movement in California of fruit in baskets with gauze or cloth covers; such a package apparently was never used in this State and there is no likelihood of its being used. The reason given by the express companies for desiring the change in their tariff as applicable to this State, notwithstanding that there is no movement under the requested change, is that it affects the official express classification applicable all over the United States, and in order to make it uniform, the consent of the California Commission is necessary.

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In any event, it is apparent that fruit packed in gauze or cloth covered baskets should take a higher rate than fruit packed in closed crates, because it would be impossible to carry fruit safely where it was piled in tiers with the tops of the baskets unprotected, and the express company would be compelled either to carry a smaller number of tiers or else risk injury to the fruit.

The application should be granted. An order based upon the foregoing conclusions is submitted as follows:

ORDER.

It is hereby ordered that permission be and it is hereby granted to the above named applicants, the American Express Company, the Globe Express Company and Wells Fargo & Company Express, to change the classification of fruit, green, in gauze or cloth covered baskets, to read "Merchandise."

The foregoing opinion and order are hereby approved and adopted as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of May, 1912.

DECISION No. 83.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR CONSTRUCTION OF GAS PLANT NEAR THE CITY OF LINDSAY AND GAS DISTRIBUTING SYSTEM WITHIN THE CITY OF LINDSAY, FOR AN ORDER PERMITTING THE EXERCISE OF A FRANCHISE RIGHT TO BE SECURED FROM THE CITY OF LINDSAY, AND FOR AN ORDER AUTHORIZING ISSUANCE OF BONDS OF FACE VALUE OF FORTY THOUSAND DOLLARS.

Application No. 1.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY TO PURCHASE PROPERTY OF HOME GAS COMPANY OF PORTERVILLE ALSO FOR AN ORDER AUTHORIZING CENTRAL CALIFORNIA GAS COMPANY TO ISSUE BONDS OF THE FACE VALUE OF THIRTY-ONE THOUSAND FOUR HUNDRED DOLLARS AND PREFERRED STOCK OF THE PAR VALUE OF

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TWENTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS; ALSO APPLICATION OF THE HOME GAS COMPANY OF PORTERVILLE TO SELL ITS PROPERTY TO THE CENTRAL CALIFORNIA GAS COMPANY, AND FOR AN ORDER PERMITTING THE EXERCISE OF A FRANCHISE RIGHT TO BE SECURED FROM THE CITY OF PORTERVILLE.

Application No. 14.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN THE MATTER OF GAS TO BE SUPPLIED IN THE CITY OF EXETER AND IN THE COUNTY OF TULARE; ALSO FOR AN ORDER PERMITTING THE EXERCISE OF FRANCHISE RIGHTS TO BE SECURED FROM THE CITY OF EXETER AND THE COUNTY OF TULARE; ALSO FOR AN ORDER AUTHORIZING THE ISSUANCE OF BONDS OF THE FACE VALUE OF SEVENTY-FIVE THOUSAND DOLLARS.

Application No. 15.

Decided May 30, 1912.

Proceedings which took place before the Public Utilities Act went into effect resulted in conditions which probably would not have been authorized in their present form. Applicant desires now to go forward from this point, and to take other steps, which, standing alone, considerations of public policy would not prevent. It being clear that the communities to be served by this utility are in need of the service and the proceedings which are now sought to be had, if taken under the restrictions herein imposed, will subserve the best interests of the public, application granted.

The Commission is of the opinion that there is a field for the manufacture and distribution of gas in the communities affected, but cannot pass on the probable success of any particular plan of supplying said field. Capital stock issued prior to the effective date of the Public Utilities Act required a certain amount to be turned in to the Commission, and to have stamped thereon the words: "Issued for control only and not to be transferred without the consent of the Railroad Commission," or similar words, in order to make sure that the stock will not be sold to unsuspecting purchasers in excess of its value. Under the circumstances, bonds will not be permitted to issue in excess of 80 per cent of the value of the property to be acquired.

It should be clearly understood in these three applications and in all other cases of issuance of certificate of public convenience and necessity and approval of franchise rights, secured or to be secured, and of issues of stocks, bonds, or other securities, that the Commission does not and cannot guarantee the financial success of the enterprise.

Lester G. Burnett, for applicant.

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REPORT OF THE COMMISSION.

The applications in the three cases entitled as above are made in pursuance of a general plan of the Central California Gas Company involving in part the construction of a gas plant near the city of Lindsay, the construction of distributing systems for gas in the cities of Lindsay and Exeter, and of a high pressure gas pipe line between the company's plant near the city of Lindsay and the cities of Porterville and Exeter, and also the purchase by the Central California Gas Company of the property of the Home Gas Company of Porterville in the city of Porterville.

In Application No. 1 Central California Gas Company applies for a certificate of public convenience and necessity in connection with the erection of its proposed gas plant near Lindsay and the construction of a distribution system within said city; and also for an order that the Commission will hereafter, upon application, issue its certificate permitting the exercise of a franchise for which applicant has applied to the city of Lindsay; also for an order authorizing the issuance by petitioner of bonds of the face value of $40,000, to be used in the constructing of applicant's gas plant and its distributing system in the city of Lindsay.

In Application No. 14 Central California Gas Company applies for permission to purchase all the property of the Home Gas Company of Porterville, except its solvent credits, and to issue bonds of the face value of $31,500 and preferred stock of the par value of $28,500 for the purchase of said property. By "property" applicant seems to mean the capital stock of the Home Gas Company of Porterville. In this application Home Gas Company of Porterville also asks for an order authorizing it to sell all of its property except its solvent credits to the Central California Gas Company.

In Application No. 15 Central California Gas Company asks for a certificate of public convenience and necessity in the matter of the supply of gas to the city of Exeter and of the construction of gas mains from applicant's plant at Lindsay to Porterville and also to Exeter; also for an order that the Commission will hereafter, upon application, issue its certificate authorizing applicant to use franchises for which applicant has applied to the city of Exeter and the county of Tulare; also for an order authorizing the issue by applicant of bonds having the face value of $75,000, for the purpose of constructing a high pressure gas pipe line along the highways of Tulare County from applicant's proposed plant near Lindsay to Porterville, and also from said plant to Exeter.

At the hearing, the Home Gas Company of Porterville, also asked for an order declaring that the Commission will hereafter authorize the

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company to exercise a franchise right for which application has been made to the city of Porterville, and Central California Gas Company asked permission to execute a trust deed or mortgage to secure a maximum issue of first mortgage forty year gold bonds of the face value of $300,000.

The Central California Gas Company was incorporated under the laws of California on January 8, 1912. Its authorized capital stock is $100,000, consisting of 1,000 shares of the par value of $100 each. Of said shares 500, representing a par value of $50,000, are common and 500, representing a par value of $50,000, are preferred. On February 1, 1912, Central California Gas Company entered into a written agreement with General Operating and Construction Company, providing in part as follows:

> "Said party of the first part (Central California Gas Company) agrees that it will for labor heretofore done issue or cause to be issued to said party of the second part, 150 shares of preferred stock and 500 shares of common stock of Central California Gas Company upon the ensealing of these presents and that it will in consideration of the work and material to be done and furnished under specifications entitled 'Specifications for gas plant and distributing system for Central California Gas Company' being done and furnished, pay or cause to be paid 80 six per cent bonds of Central California Gas Company, as hereinafter provided."

These bonds were to have a face value of $500 each, so that their total face value would be $40,000, and were to be delivered to the contracting company when "the material necessary to comply with the hereinbefore described specifications has been delivered on the ground at the gas plant site or in Lindsay." The contracting company agreed that it would accept "in full payment for labor done" the stock hereinbefore enumerated and would accept in full payment "for the work and material described" under said specifications "the 80 bonds hereinbefore described at the time and in the manner hereinbefore set forth." The contract is accompanied by a bond on behalf of the contracting company, in the penal sum of $1,500.

Under this contract all the common stock of the Central California Gas Company, having a par value of $50,000, and preferred stock having a par value of $15,000 was issued and delivered to the General Operating and Construction Company prior to March 23, 1912, on which day the Public Utilities Act became effective. Applicant also sold to citizens of Lindsay prior to March 23, 1912, at par, 65 shares of preferred stock having a par value of $6,500. The remaining shares of its preferred stock having a par value of $28,500 applicant desires to issue in connection with its purchase of the Home Gas Company of Porterville. No bonds have been issued.

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Applicant's engineer estimates the cost of the proposed gas plant at Lindsay without reference to contractor's profit, engineering contingencies, administration and interest during construction at $32,750. Allowing liberally for these omitted items the value of the plant will not exceed the sum of $40,348. The applicant has purchased a site for its plant near Lindsay for the sum of $600, so that the total value of its property in Lindsay and at its gas plant will not exceed $40,948.

As against this property applicant desires to issue bonds of the par value of $40,000 in addition to having already issued common stock of the par value of $50,000 and preferred stock of the par value of $15,000.

We find ourselves at this point squarely up against this proposition. We find a condition brought about by proceedings which took place before the Public Utilities Act went into effect which probably we would not have authorized in their present form. The applicant desires now to go forward from this point and to take other steps which in our opinion, standing alone, considerations of public policy would not prevent. The question so presented is one of the most serious matters which we shall be called upon to decide, and we are frank to say that we have not fully made up our minds with reference thereto. We should not like to render a decision in this case which might be used as a precedent against the correct determination of this important question, but we have not yet decided definitely what it is best to do. Very often in applications such as this, if we reject them, our policy will be merely destructive. No doubt there are cases where the public would be better off if enterprises were killed, but in many instances—and we concede this to be one—the public really needs the service of the utility which will not be accorded should we apply to enterprises that were in being at the time our authority took form tests that we would apply to a new enterprise arising entirely under our control. It being clear that the communities to be served by this utility are in need of the service, and that the proceedings which are now sought to be had, if taken under the restrictions herein imposed, will not be subversive of the best interests of the public, and this decision being held merely to be a determination of the questions under the peculiar state of the facts before us and not to be used as a precedent in other similar cases where the facts may be somewhat different, we have concluded to grant the applications in the form set out in the order, as will now appear with greater particularity.

The cities of Lindsay and Exeter are at present not supplied with gas. A gas utility in these towns would, however, come in competition with electricity. There is also no gas service between the towns of Lindsay and Porterville and Lindsay and Exeter. The Commission finds that public convenience and necessity would be subserved by the construction of applicant's proposed line and system. It also finds that

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public convenience and necessity would be subserved by the exercise by Central California Gas Company of the franchise for which it has applied and by the exercise by the Home Gas Company of Porterville of the franchise for which it has applied.

The Commission is also of the opinion that the proposed purchase by Central California Gas Company of the property or capital stock of the Home Gas Company of Porterville, except solvent credits, and the sale thereof by the Home Gas Company of Porterville to the Central Gas Company should be sanctioned. It should be clearly understood, however, that in making these findings the Commission does not guarantee the financial success of the proposed construction. The Commission is of the opinion that there is a field for the manufacture and distribution of gas in the communities affected but cannot pass on the probable success of any particular plan of supplying this field.

We shall refer now to the proposed issues of stocks and bonds.

As already stated, Central California Gas Company desires to issue bonds of the par value of $40,000 against a plant and distributing system, the value of which, according to the estimates of its own engineer, will not exceed $40,948.00. Under the facts as shown in this application, the Commission cannot authorize the issue of bonds practically to the full value of the property to be acquired. It must be borne in mind that this is to be a new utility and that there is always risk of failure attendant upon a new enterprise. The Commission is of the opinion that on the facts as presented in this case, it cannot in this application authorize an issue of bonds in excess of the face value of $33,000. As already indicated, the contract between the Central California Gas Company and the General Operating and Construction Company provides that the entire bond issue shall be delivered to the contracting company when the material necessary for the construction of the plant has been delivered on the ground at the gas plant site or in Lindsay, and the amount of the bond to insure the faithful performance of the contract is only $1500, as against a value of some $40,348. In order to protect the utility we have concluded to make our authority to issue the bonds conditioned upon the giving by the construction company to the utility of a bond, satisfactory to the Commission, in the penal sum of $20,000. It is clear that the General Operating and Construction Company will be obliged to sell the preferred stock of the par value of $15,000 which has already been issued to it if it is to derive from the stocks and bonds of the Central California Gas Company a fund sufficient to complete the plant. As these shares of stock have already been issued, it will not be necessary for the Commission to fix the minimum price at which they may be sold. Mr. C. S. S. Forney, the president of the General Operating and Construction Company, and also

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the organizer of the Central California Gas Company, testified that the common stock of the par value of $50,000 which has already been issued to the contracting company, has no present value, and that his company desires to retain this stock merely for the purpose of control. Of the 500 shares of stock involved, some 140 have passed out of the hands of the General Operating and Construction Company, leaving some 360 shares, representing a par value of $36,000, still in the hands of the company. Mr. Forney has offered to turn in the certificates representing this stock to the Railroad Commission, and to have stamped thereon the words "Issued for control only and not to be transferred without the consent of the Railroad Commission," or similar words, in order to make sure that the stock will not be sold to unsuspecting purchasers in excess of its value. As an original proposition, the Railroad Commission would not have consented to the issue of common stock to the extent to which it has been issued by the applicant. In this case, however, as the stock was issued prior to the effective date of the Public Utilities Act, and as the danger of sale to purchasers will be removed by the adoption of Mr. Forney's suggestion, the Commission will not exercise authority with reference to the common stock further than to make as a condition of its order the turning in of the stock for the purpose of having stamped thereon the language hereinbefore quoted or language to the same effect.

In its Application No. 14, the Central California Gas Company asked permission to pay for the plant or the capital stock of the Home Gas Company of Porterville, bonds having a face value of $31,500 and preferred stock of the par value of $28,500. The bonds or the proceeds thereof are to be used to liquidate existing indebtedness of the Home Gas Company of Porterville, and the preferred stock is to be exchanged for the common stock of the Home Gas Company of Porterville, now outstanding in the amount of $35,500 par value. The applicant's engineer placed the value of the plant of the Porterville Company at something over $47,000. While the Commission does not approve this valuation, it is of the opinion that the application with reference to the purchase and sale of the Porterville plant is a proper one and should be granted, provided that the bonds be disposed of so as to net the applicant not less than 80 per cent of their par value.

In its Application No. 15, Central California Gas Company asks authority to issue bonds of the par value of $75,000 to build a high pressure gas pipe line from the applicant's proposed plant near Lindsay to Porterville and another one from this plant to Exeter. Applicant alleges that the cost of the proposed construction will be $60,000, and asks authority to issue bonds of the par value of $75,000. No plans are as yet presented for financing a distributing plant within the town of Exeter. For that reason the Commission's consent with reference to

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that portion of the gas pipe line which is to be laid from the plant at Lindsay to Exeter will be withheld until a complete and satisfactory plan for financing the distributing system in Exeter is presented to the Commission. The Commission is willing to authorize the construction of the gas pipe line from the plant near Lindsay to Porterville, but not in the amount requested by applicant. The Commission will not authorize an issue of bonds to the amount of 125 per cent of the value of the property to be acquired, where there is no property, not already covered by other outstanding securities, to serve as additional security. The Commission will not, under the circumstances, as here presented, authorize an issue in excess of 80 per cent of the value of the property to be acquired. The cost of the pipe line between Lindsay and Porterville, as computed by the applicant, is $29,700. The Commission's authorization will accordingly be limited to a bond issue of the par value of $23,500. As the applicant's entire common stock has already been issued, and as the preferred stock will be taken up by the sale of 65 shares already made and by applications one (1) and fourteen (14), it will be necessary for the applicant to derive the additional funds needed in connection with application fifteen (15) by assessment on the stockholders or in some other manner.

As in all cases of this kind, it will be necessary for applicant to keep separate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of the bonds hereby authorized, and file with the Commission monthly reports showing the sale or disposition of such bonds, the moneys realized therefrom, and the use and disposition of such moneys.

It should be clearly understood in these three applications and in all other cases of issuance of certificates of public convenience and necessity and approval of franchise rights, secured or to be secured, and of issues of stocks, bonds, or other securities, that the Commission does not and cannot guarantee the financial success of the enterprise. People who finance public utilities in this State must continue to take the risk of success of the venture just as they have always done in the past. The Public Utilities Act is no magic talisman insuring public utilities against failure in case good judgment is not exercised in the financing and construction thereof. Under the Public Utilities Act, the projectors of public service enterprises may rest assured that in so far as the Commission has jurisdiction, the utility will be permitted to collect rates sufficient to yield a fair return on the money wisely and sanely expended in serving the public, but more than this they have no right to expect.

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ORDER.

Application having been made to the Railroad Commission of the State of California by Central California Gas Company and by Home Gas Company of Porterville, as hereinbefore indicated in the opinion which precedes this order, and a hearing having been duly held on each of the three applications which were filed, it is hereby ordered as follows:

(1) The Railroad Commission finds that public convenience and necessity will be subserved by the construction of a gas plant near the city of Lindsay and by the construction of a distributing system for gas in the cities of Lindsay and Exeter by the construction of high pressure gas pipe lines along the highways of the county of Tulare between the cities of Lindsay and Porterville and Lindsay and Exeter.

(2) The Commission finds that public convenience and necessity will be subserved by the exercise by Central California Gas Company and by the Home Gas Company of Porterville of the franchise rights for which these companies have respectively applied to the cities of Lindsay, Porterville, and Exeter and to the county of Tulare, as shown by the applications on file with this Commission and indicated in the foregoing opinion.

(3) The Commission hereby authorizes the execution by Central California Gas Company to the Los Angeles Trust and Savings Bank, trustee, of a trust deed or mortgage to secure a maximum issue of $300,000 first mortgage forty year gold bonds, consisting of 600 bonds of the denomination of $500 each, to be dated April 1, 1912, and payable on the first day of April, 1952, bearing interest at the rate of six (6) per cent per annum, and payable semiannually on the first days of October and April of each year.

(4) The Commission authorizes the issue of bonds under said mortgage in the amount of $33,000, face value, to be applied solely to the construction of its proposed plant near Lindsay and its distributing system in said city, on the condition that the General Operating and Construction Company turn in to the Commission the amount of the common stock of the Central California Gas Company, now in its hands, amounting to some 360 shares, having a par value of $36,000, to have stamped thereon the words "Issued for control only and not to be transferred without the consent of the Railroad Commission," or words having a similar import, and on the further condition that applicant secure from General Operating and Construction Company a bond in the penal sum of $20,000 conditioned upon the faithful performance of its contract to construct the gas plant near the city of Lindsay and the distributing plant therein, and satisfactory to the Commission.

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(5) The Commission authorizes the purchase by Central California Gas Company of the property or capital stock of the Home Gas Company of Porterville, except its solvent credits, and the sale thereof by the Home Gas Company of Porterville to the Central California Gas Company. For this purpose the Commission authorizes the issue by the Central California Gas Company of bonds under said mortgage having a face value of $31,500 and preferred stock of the par value of $28,500, subject as to the bonds to the further conditions specified in section 7 hereof.

(6) The Commission authorizes the issue of bonds under said mortgage having a face value of $23,500 for the purpose of constructing a high pressure gas pipe line along the highways of the county of Tulare from applicant's proposed plant near Lindsay to Porterville, subject to the conditions specified in section 7 hereof.

(7) The issue of bonds specified in sections 5 and 6 hereof shall be upon the following conditions, in addition to those heretofore specified:

1. The Central California Gas Company shall sell said bonds so as to net the said company not less than 80 per cent of the par value of the principal thereof besides interest accrued thereon.

2. The Central California Gas Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of said bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

3. The Central California Gas Company shall hereafter submit to the Commission for its approval an amendment to its mortgage providing for a sinking fund for the retirement of its bonds.

4. The authority hereby given to issue said bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

Dated at San Francisco, California, this 30th day of May, 1912.

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DECISION NO. 84.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE ACROSS TWELVE PUBLIC HIGHWAYS ON ITS MARYSVILLE-COLUSA BRANCH.

Application No. 33.

Decided May 30, 1912.

Arthur M. Seymour, for applicants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Northern Electric Railway Company having heretofore filed with this Commission its application for permission to construct its track at grade across the twelve public highways hereinafter specified on the line of its proposed extension between the cities of Marysville and Colusa, and a public hearing having been held on said application before this Commission in the city of Marysville on the twenty-fourth day of May, 1912, and it appearing from the testimony taken at said hearing and from the maps and profiles filed with the application and from the report of the engineer of this Commission that it is not reasonable or practicable to avoid grade crossings at said points of proposed crossing and it further appearing that applicant has secured the necessary franchises from the counties of Sutter, Colusa, and Yuba, and that said application should be granted, subject to the conditions hereinafter specified.

It is hereby ordered that permission is hereby granted to Northern Electric Railway Company to construct its track at grade across the twelve public highways specified in its said application, being respectively located as follows:

No. 1—At Railroad Engineer Station L–24+02 in section 17, township 15 north, range 3 east, in Sutter County, California;

No. 2—At Railroad Engineer Station L–85+52 in section 13, township 15 north, range 2 east, Sutter County, California;

No. 3—At Railroad Engineer Station L–138+56 in section 14, township 15 north, range 2 east, Sutter County, California;

No. 4—At Railroad Engineer Station L–191+03 in section 14, township 15 north, range 2 east, Sutter County, California;

No. 5—At Railroad Engineer Station H–281+16 in section 16, township 15 north, range 2 east, Sutter County, California;

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No. 5*a*—At Railroad Engineer Station L–524+50 in section 15, township 15 north, range 1 east, Sutter County, California;

No. 6—At Railroad Engineer Station H–619+43 in section 16, township 15 north, range 1 east, Sutter County, California;

No. 6*a*—At Railroad Engineer Station L–668+60 in section 18, township 15 north, range 1 east, Sutter County, California;

No. 7—At Railroad Engineer Station H–824+65 in Jimeno Rancho, Colusa County, California;

No. 8—At Railroad Engineer Station H–867+38 in Jimeno Rancho, Colusa County, California;

No. 9—At Railroad Engineer Station H–1062+63 in Jimeno Rancho, Colusa County, California;

No. 10—At Railroad Engineer Station H–1104+96 in Crommer Tract (extension of Clay street, Colusa), Colusa County, California.

And subject to the following conditions:

1. The entire expense of constructing said crossings shall be borne by the said railway company.

2. The railway company shall hereafter forever maintain each of said crossings in good and first class condition for the use of the public.

3. The grades of approach to the track for first class roads, being those hereinbefore enumerated as Nos. 3, 5 and 6*a*, shall not exceed 8 per cent and the grades of approach for second class roads, being the remaining roads hereinbefore enumerated, shall not exceed 10 per cent.

4. The width of roadbed at crown for first class roads shall not be less than 24 feet and the width of roadbed at crown for second class roads shall not be less than 18 feet.

5. The railway company shall at its own expense place and maintain not less than 6 inches in depth of good gravel or stone ballast on the approaches of said crossings, extending to the toes of the slope on each side.

6. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of May, 1912.

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DECISION NO. 85.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO AND WOODLAND RAILROAD COMPANY, A CORPORATION, FOR PERMISSION TO CONSTRUCT ITS TRACK, AT GRADE, OVER THE TRACKS OPERATED BY THE SOUTHERN PACIFIC COMPANY, AT MIKON, YOLO COUNTY, STATE OF CALIFORNIA.

Application No. 37.

Decided May 30, 1912.

T. T. C. Gregory, for applicant.
H. C. Booth, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Sacramento and Woodland Railroad Company having heretofore filed with this Commission its application for permission to construct its track at grade across the tracks of the Southern Pacific Company at Mikon, Yolo County, California, and public hearings having been held on said application before this Commission in the city of Sacramento, California, on the 17th day of May, 1912, and in San Francisco, California, on the 27th day of May, 1912; and it appearing from the testimony taken at said hearings and from the maps and profiles filed with the application and from the report of the engineer of this Commission, that it is not reasonable or practicable to avoid a grade crossing at the point of proposed crossing with the tracks of the Southern Pacific Company, and that said application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Sacramento and Woodland Railroad Company to construct its railroad at grade across the railroad operated by the Southern Pacific Company at Mikon, Yolo County, California, in accordance with the plans and profiles submitted by Sacramento and Woodland Railroad Company, subject to the following conditions:

(1) The crossing frogs necessary for the said grade crossings shall be furnished by the Sacramento and Woodland Railroad Company and shall forever hereafter be maintained in good and first-class condition at the expense of said company.

(2) The Sacramento and Woodland Railroad Company shall install, at its own expense for the protection of said crossing, a first-class standard electric interlocking device of such plan and design as shall

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be approved by this Commission, and it shall conform to the following general specifications, viz:

(*a*) The derails installed on the tracks of the Southern Pacific Company protecting the normal directions of approach of traffic shall be not less than 500 feet from the crossing.

(*b*) The derails installed for the protection of backup movements on the Southern Pacific Company's tracks shall be not less than 200 feet from the crossing.

(*c*) The derails on the track of the Sacramento and Woodland Railroad Company shall be not less than 400 feet from the crossing.

(*d*) Home signals shall be installed not less than 55 feet in advance of the derails.

(*e*) Distant signals shall be installed not less than 2,000 feet in advance of the home signals on the Southern Pacific Company's tracks.

(*f*) All tracks shall be protected with electric track circuits within signal limits.

(*g*) The layout and character of installation shall in general conform to the specifications governing the installation of electric interlocking device of the Southern Pacific Company, and said device shall be completed to the satisfaction of this company.

(*h*) Plans for said device shall be submitted in triplicate to this Commission for its approval before the work of construction is begun.

(3) The expense of maintaining and operating said interlocking device after its installation shall be divided between the Sacramento and Woodland Railroad Company and the Southern Pacific Company in the proportion of the number of functions necessary to operate the tracks of each.

(4) After the completion of said interlocking device it shall not be placed in operation until it has been inspected by and received the approval of this Commission, and an order issued authorizing its operation.

(5) Until the order is issued by this Commission approving and authorizing the operation of said device, all trains passing over said crossings shall come to a full stop within 200 feet thereof and after giving proper signals shall pass over said crossings under full control.

(6) Sacramento and Woodland Railroad Company shall complete said device ready for inspection and approval by this Commission within sixty days after the installation of the crossing frogs.

(7) The interlocking device shall hereafter be maintained and operated subject to such rules and regulations as this Commission may hereafter issue governing in such matters.

(8) The terms and conditions specified in this order relating to said crossings as protection thereof shall hereafter be subject to such further

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revision and modification as to this Commission may seem just and proper, and this Commission reserves the right to revoke its permission if public convenience and necessity demands such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, this 30th day of May, 1912.

DECISION No. 86.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE ACROSS A PUBLIC STREET OR HIGHWAY KNOWN AS "REAVIS ROAD" IN THE CITY OF CHICO, CALIFORNIA.

Application No. 47.

Decided May 30, 1912.

Arthur M. Seymour, for applicant.
Mayor William Robbie, for city of Chico.
Supervisor R. P. Holmes, for Butte County.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Northern Electric Railway Company having filed with this Commission its application for permission to construct its track at grade across a public highway known as "Reavis Road," at a point hereinafter indicated, and a public hearing having been held on said application before this Commission in the city of Chico, on the twenty-fourth day of May, 1912, and it appearing from the testimony taken at said hearing and from the maps and profiles filed with the application and from the report of the engineer of this Commission that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Northern Electric Railway Company to construct its track at grade across that certain public street or highway known as "Reavis Road," in section 34, township 22 north, range 1 east, M.D.B. and M., near the west corporate limits of the city of Chico, subject to the following conditions:

(1) The entire expense of constructing said crossing shall be borne by the said railway company.

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(2) The railway company shall hereafter forever maintain said crossing in good and first class condition for the use of the public.

(3) The grades of approach to said crossing shall not exceed 8 per cent, and the width of roadbed at crown shall not be less than 24 feet.

(4) The railway company shall at its own expense place and maintain not less than 6 inches in depth of good gravel or stone ballast on the approaches of said crossing extending to the toes of the slope on each side.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demands such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of May, 1912.

DECISION NO. 87.

IN THE MATTER OF THE APPLICATION OF THE STOCKTON TERMINAL AND EASTERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF BONDS OF THE PAR VALUE OF SIXTY-FIVE THOUSAND DOLLARS.

Application No. 51.

Decided May 30, 1912.

Held. That the purposes for which applicant desires to secure funds by the proposed issue of bonds are proper and that the sums specified are reasonable for such purposes. The investing public should bear in mind that the Commission does not guarantee bonds, stocks, or other securities which it authorizes. Ordinarily, the Commission's function in passing on a proposed bond issue is principally to ascertain whether the purposes for which it is desired to secure funds are proper and whether the moneys desired for such purposes are reasonably necessary therefor and whether the bonds are sold for a reasonably high price, and to take the necessary steps to assure itself that the moneys derived from the disposition of such securities are expended solely for the purposes authorized.

REPORT OF THE COMMISSION.

THELAN, *Commissioner.*

This is an application of Stockton Terminal and Eastern Railroad Company for an order authorizing the issue of first mortgage bonds of the par value of $65,000.

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Applicant was incorporated under the laws of California on October 28, 1908, for the purpose of constructing a railroad of standard gauge, to be operated by electricity or other motive power, from the City of Stockton easterly and northeasterly to the town of Jenny Lind, in Calaveras County, a distance of some 30 miles. Applicant's railroad has been constructed along the route proposed from Stockton to Fine, a distance of some 15.2 miles. The railroad has been in operation since September 1, 1910. It was at first operated as a steam railroad but is now operated by means of a gasoline motor car. The company expects to operate by means of electricity when the railroad has been completed. In addition to its roadbed and rails, the applicant owns a franchise in the city of Stockton, a franchise granted by the county of San Joaquin, a gasoline motor car, a steam locomotive, four flat cars, one box car, one combination passenger car and one auto-motor car. The petition alleges that the original cost of this property was $298,200.09. It appears from the evidence that most of the roadbed could now be reproduced for between eight and ten thousand dollars per mile.

Applicant's authorized capital stock consists of 6,000 shares of the par value of $100 each, whereof 2,639 shares have been issued. From the sale of this stock the applicant has received $243,900 in cash. Applicant has executed its trust deed, dated April 1, 1911, to the Mercantile Trust Company of San Francisco, to secure the issue of a bonded indebtedness amounting to $500,000. Of this amount, bonds of the par value of $45,000 have been sold and delivered; bonds of the par value of $10,500 have been subscribed for but not delivered; bonds of the par value of $11,000 have been deposited as collateral security for the payment of three notes; and bonds of the par value of $15,000 have been issued as security for the issuance of 100 collateral bonds of the denomination of $100, issued under a collateral trust agreement with said Mercantile Trust Company of San Francisco, likewise dated April 1, 1911.

The applicant now has in its treasury, certified to but not issued, the following first mortgage bonds:

$1,000 denomination, Nos. 42–60, inclusive	$19,000 00
500 denomination, Nos. 280, 281 and 283–400, inclusive	60,000 00

and also the following collateral bonds:

$100 denomination Nos. C63 to C100, inclusive	$3,800 00

Applicant now desires to discharge certain obligations, to make certain improvements in its facilities, and to acquire property and extend its facilities for the construction of an extension of its line of railway from its present eastern terminus at Fine some two and one half miles to

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Bellotta. For these purposes, applicant desires to expend amounts of money as follows:

Discharge of obligations	$26,925 82
Repair of old track laid for extension	500 00
Turntables, Stockton and Linden	670 00
Switches, four sets on old line at $80	320 00
Rights of way for extension	3,000 00
Grading, repair of old grade from station 100 to station 225	250 00
New grade, embankment 5,269 cubic yards at 20 cents	1,053 80
Steel, 283 tons, 60 pound rails at $41 per ton	11,603 00
Track fastenings, spikes, splice bars and bolts	1,080 00
Switches, four sets at $80	320 00
Track laying and surfacing	1,650 00
Bridges, trestles and culverts, 3 structures	1,260 00
Fences, cattle guards and crossings	616 00
Station buildings and platforms	500 00
Turntable, Bellotta	335 00
Engineering and miscellaneous expenditures	1,000 00
Further improvements not definitely fixed upon	916 38
	$52,000 00

To secure these funds, applicant desires to issue first mortgage bonds of a par value of $65,000, which bonds applicant proposes to sell so that they will net not less than 80 per cent of their par value. I find that the purposes for which applicant desires to secure funds by the issue of its bonds are proper and that the sums hereinbefore specified are reasonable for such purposes. As the value of the property is considerably in excess of the sum of the issued and the proposed new bonds, I find that it is proper to issue bonds of the par value of $65,000, or so much thereof as may be necessary, to secure the funds hereinbefore specified. The trust deed contains adequate provisions for a sinking fund.

It will, of course, be borne in mind by the investing public that this Commission does not guarantee bonds, stocks or other securities which it authorizes. Ordinarily, the Commission's function in passing on a proposed bond issue is principally to ascertain whether the purposes for which it is desired to secure funds are proper and whether the moneys desired for such purposes are reasonably necessary therefor and whether the bonds are sold for a reasonably high price and to take the necessary steps to assure itself that the moneys derived from the disposition of such securities are expended solely for the purposes authorized.

I recommend that the application be granted, to take effect when the necessary fee is paid, and submit herewith the following order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Stockton Terminal and Eastern Railroad Company for an order authorizing the issue of said company of first mortgage gold bonds of the par value of $65,000, said bonds to be payable on the first day of April, 1941, unless sooner redeemed, and to bear

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interest at the rate of six (6) per cent per annum, payable semi-annually on the first days of April and October, and secured by a trust deed or mortgage upon all the property of the company, and a hearing having been duly held, and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary to and reasonably required by said company for the discharge of its obligations and acquisition of property and the construction, completion, extension and improvement of its facilities.

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by the Stockton Terminal and Eastern Railroad Company of sixty-five thousand ($65,000) dollars face value, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of bonds of said company, maturing the first day of April, 1941, unless sooner redeemed, to bear interest at six (6) per cent per annum, payable semiannually under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the first day of April, 1911, made and executed by said Stockton Terminal and Eastern Railroad Company to Mercantile Trust Company of San Francisco, as trustee, upon the conditions following, and not otherwise:

(1) The Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent of the par value of the principal thereof besides interest accrued thereon.

(2) The proceeds from the sale of said bonds shall be applied to the following purposes only:

(*a*) For the discharge of obligations, as specified in application..$26,925 82
(*b*) For the acquisition of property and the construction, completion, extension and improvement of facilities, as specified in application..... 25,074 18

(3) Said company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued and on or before the tenth day of each month the company shall make a verified report to the Commission stating the sale or other disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

(4) The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of May, 1912.

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DECISION No. 88.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE OVER FIVE PUBLIC STREETS IN AND ADJACENT TO THE CITY OF CHICO, CALIFORNIA.

Application No. 56.

Decided May 30, 1912.

Arthur M. Seymour, for applicant.
Mayor William Robbie, for City of Chico.
Supervisor R. P. Holmes, for Butte County.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Northern Electric Railway Company having heretofore filed with this Commission its application for permission to construct its track at grade across five (5) public streets hereinafter indicated, and a public hearing having been held on said application before this Commission in the city of Chico on the twenty-fourth day of May, 1912, and it appearing from the testimony taken at said hearing and from the maps and profiles filed with the application and from the report of the engineer of this Commission that it is not reasonable or practicable to avoid grade crossings; and it further appearing that the applicant has secured the necessary franchises from the city of Chico, and that said application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted to Northern Electric Railway Company to construct its track at grade across the five (5) public streets and highways specified in said application being respectively located as follows:

(1) At the intersection of Orange street with Ninth street in the city of Chico.

(2) At the intersection of Cedar street with Ninth street in the city of Chico.

(3) At the intersection of Walnut street with Ninth street in the city of Chico.

(4) At the intersection of Oak street with Ninth street in the city of Chico.

(5) At the intersection of Hickory, Warren and Seventh streets at a

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point immediately adjacent to the western limits of said city of Chico; and subject to the following conditions:

1. The entire expense of constructing said crossings shall be borne by the said railway company.

2. The railway company shall hereafter forever maintain said crossings in good and first class condition for the use of the public.

3. The grades of approach to said crossings shall not exceed 8 per cent, and the width of roadbed at crown shall be not less than 24 feet.

4. The railway company shall at its own expense place and maintain not less than 6 inches in depth of good gravel or stone ballast on the approaches of said crossings, extending to the toes of the slope on each side.

5. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, public convenience and necessity demands such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this the 30th day of May, 1912.

DECISION NO. 89.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR PERMISSION TO CONTINUE CERTAIN DEVIATIONS FROM THE RATES, TOLLS, RENTALS AND CHARGES SHOWN IN ITS SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 70.

Decided June 1, 1912.

REPORT OF THE COMMISSION.

Whereas the above mentioned company did on the twenty-eighth day of May, 1912, file an application to continue to make certain deviations from its schedules, which said deviations are incorporated in said application and made a part thereof, and reference to which for particulars is hereby made; and

Whereas the Commission is of the opinion that said application is

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made in good faith and that the public would not be injured by it being granted; it is therefore

Ordered that the said deviations be permitted until the further order of this Commission.

Dated at San Francisco, June 1, 1912.

DECISION NO. 90.

IN THE MATTER OF THE APPLICATION OF THE METROPOLITAN WAREHOUSE COMPANY AND VARIOUS OTHER WAREHOUSE COMPANIES TO INCREASE THEIR RATES FOR STORING AND HANDLING COMMODITIES.

Applications Nos. 16 to 25 inclusive and No. 28.

Decided June 6, 1912.

Applicants having submitted statements showing that in almost every instance they had lost money during the last several years, that the proposed rates are in general as low or lower than rates for corresponding service in other Pacific coast seaports and in eastern commercial centers, and also showing the cost of handling and the return which the proposed rates would yield, and patrons of the applicants having appeared but having neglected to controvert such evidence,

Held, The Commission is not justified in assuming the burden on its own behalf of testing the correctness of the evidence presented, by an investigation carried on under its direction.

Held, There is no reason to doubt that the conditions are exactly as portrayed in the evidence, and, therefore, that justice demands that the relief sought be granted.

C. W. Durbrow, for applicants.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

These are applications on behalf of the Metropolitan Warehouse Company, Barneson-Hibbard Warehouse Company, A. P. Heise, Harbor Warehouse Company, Oriental Warehouse Company, Haslett Warehouse Company, South End Warehouse Company, E. G. Zeile, W. B. Sanborn, De Pue Warehouse Company, and Danforth Warehouse Company, to raise and equalize the rates that were in effect on October 10, 1911.

This case came on for hearing on the third day of June, 1912, after notice duly published in accordance with this Commission's order in *The Recorder* and *San Francisco Examiner*. No one appeared in

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formal opposition thereto, but Mr. E. W. Ferguson appeared informally in behalf of himself as a dealer in flour and protested against the increases, and several other dealers in flour have written letters to the same effect, but did not appear in person to protest or to present any facts in support of their allegations. The Shredded Wheat Company also filed a letter protesting against any increases in their rates, but on inspection of the application, it appears that no request is made to increase any of the rates on cereals. Very careful compilations were filed on behalf of the various petitioners showing the cost to them of each square foot of floor space, the cost of handling and the return which the proposed rates would yield. Likewise statements were submitted showing that in almost every instance these warehouses have lost money during the last several years. Tabulations were also filed showing that the proposed rates are in general as low or lower than rates for corresponding service in other Pacific coast seaports and in eastern commercial centers.

Regardless of the importance of this case and the full invitation on the part of the Commission that those interested in the payment of storage charges appear and present evidence to the Commission, except in the instances heretofore referred to, no evidence whatsoever was presented in opposition to these applications. I find that it is either necessary that I accept the uncontroverted statement of the warehousemen and grant these applications or advise the Commission to assume the burden, on its own behalf, of testing the correctness of the evidence presented, by an investigation carried on under its direction. I do not think we should resort to the second course under the circumstances of this case, unless the Commissioner hearing the case doubts the substantial correctness of the testimony adduced. It would certainly appear that the patrons of these warehouses, knowing that substantial increases are applied for, would take sufficient interest in the proceeding to appear and present their side of the case, and their failure to do so leads me to conclude that they, like myself, have been impressed with the justice of the warehousemen's claims. I do not feel disposed to call in question the sworn statements of the several witnesses who appeared before me, and I have no reason to doubt that the conditions are exactly as portrayed in the evidence, and, if such be the case, justice demands that the relief sought be granted.

The schedules set out in the various applications, particularly in the application of the Metropolitan Warehouse Company and marked "Exhibit A," is hereby established to become effective twenty days from date as just and reasonable rates to be charged for the services set out therein, and the various applicants involved are directed to prepare their schedules in accordance with this order and to print and have presented to the Commission such schedules on or before such

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date, after which the rates set out in such schedules shall be observed in every particular and such rates shall be charged and no others.

The warehouses here involved have asked to have uniform rates fixed applying to all of them, and this order will have such effect. I am not unmindful, however, of the fact that there may be circumstances which may warrant a different charge in one warehouse than is required for the same or similar service in another, and while uniformity under similar circumstances is very desirable, when the circumstances are different, the commission may allow different rates to prevail.

In some of the protests by the dealers in flour it is urged that there is a combination between these warehouses to raise rates to a higher plane than they should be. I would respectfully suggest that such objections would be given greater weight were they based upon evidence. The rates that are here made effective are subject to complaint at any time on behalf of any legally interested party, and if such combination does exist and the result of it is that this Commission has been imposed upon and has allowed rates to be put in that are too high, on complaint the matter will be rectified.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated San Francisco, California, June 6, 1912.

DECISION No. 91.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION AT GRADE, OF A SIDE TRACK ACROSS A PUBLIC HIGHWAY AT ALMOND, ORANGE COUNTY, CALIFORNIA.

Application No. 76.

Decided June 6, 1912.

REPORT OF THE COMMISSION.

The Southern Pacific Company having heretofore filed with this Commission its application to construct, at grade, a side track across a public highway as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is neces-

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sary, and that it is not reasonable or practicable to avoid a grade crossing at the proposed point of crossing, and it further appearing that applicant has secured the necessary franchise or permit from the county of Orange, and that said application should be granted, subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted to the Southern Pacific Company to construct its track at grade as follows: Beginning at a connection with the main track of the Santa Ana branch of the Southern Pacific Railroad Company at engineer station 889+50; running thence southeasterly curving to the right and reversing to the left to a point opposite and distant at right angles 20 feet northwesterly from the center line of the main track at engineer station 892+50; thence continuing southeasterly and parallel with the main track crossing Orangethorpe avenue to a point opposite engineer station 904+50; thence curving to the left to a connection with the existing siding at the station of Almond, said point being opposite engineer station 905+60, subject to the following conditions:

(1) The entire expense of constructing said crossing shall be borne by the said railroad company.

(2) The railroad company shall hereafter forever maintain said crossing in good and first class condition for the use of the public.

(3) The grades of approach to said crossing shall not exceed 8 per cent.

(4) The width of roadbed at crown shall not be less than 24 feet.

(5) The railroad company shall, at its own expense, place and maintain not less than 6 inches in depth of good gravel or stone ballast on the approaches of said crossing, extending to the toes of the slope on each side.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 6th day of June, 1912.

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DECISION No. 92.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK AT GRADE ACROSS POTRERO STREET IN THE CITY OF SANTA CRUZ.

Application No. 77.

Decided June 6, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore filed with this Commission its application for permission to construct, at grade, a spur track as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable or practicable to avoid a grade crossing at the proposed point of crossing, and it further appearing that applicant has secured the necessary franchise or permit from the city of Santa Cruz, and that said application should be granted, subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its track at grade, commencing at a connection with the existing spur track which leads to the municipal yard of the city of Santa Cruz, at a point opposite engineer station 4172+10, running thence northerly and parallel to the main track crossing Potrero street to a point opposite engineer station 4168+90; thence curving to the right and entering private property of the Standard Oil Company, subject to the following conditions:

(1) The entire expense of constructing said crossing shall be borne by the said railway company.

(2) The railway company shall hereafter forever maintain said crossing in good and first-class condition for the use of the public.

(3) The grades of approach to said crossing shall not exceed 8 per cent.

(4) The width of roadbed at crown shall not be less than 24 feet.

(5) The railway company shall at its own expense place and maintain not less than 6 inches in depth of good gravel or stone ballast on the approaches of said crossing, extending to the toes of the slope on each side.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, [illegible]h day of June, 1912.

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DECISION NO. 93.

IN THE MATTER OF THE APPLICATION OF COAST VALLEYS GAS AND ELECTRIC COMPANY FOR PERMISSION TO MODIFY ITS TRUST DEED OF MORTGAGE AND SEVEN HUNDRED EIGHTY-SIX BONDS ISSUED THEREUNDER.

Application No. 52.

Decided June 7, 1912.

Applicant permitted to amend trust deed by striking therefrom the covenant of the company to pay any and all taxes which may be imposed upon the bonds secured by the deed under the laws of the United States, or of any state, county or municipality thereof.

Chickering & Gregory, for applicants.
W. S. Goodfellow, for E. H. Rollins & Sons.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

Coast Valleys Gas and Electric Company applies to this Commission for permission to modify the provisions of its trust deed or mortgage by striking therefrom a covenant to pay all taxes which may be imposed thereon and also to amend the bonds heretofore issued under such trust deed or mortgage.

Applicant was incorporated under the laws of this State on March 19, 1912, with an authorized capital stock of 50,600 shares, of the par value of $100 each. On March 20, 1912, its board of directors authorized a bonded indebtedness of ten million dollars. On March 22, 1912, applicant executed and recorded its trust deed or mortgage to Mercantile Trust Company of San Francisco, to secure said bonds. On the same day applicant also entered into an agreement with E. H. Rollins & Sons, under which the latter agreed to purchase 786 of applicant's six per cent bonds of the denomination of $1,000 each, secured by said trust deed or mortgage, at a price of ninety-five (95) per cent of the par value thereof, with accrued interest to date of delivery, making a total of $749,451, which moneys were to be applied as specified in said agreement. On the same day, the 786 bonds covered by the agreement were executed and delivered to the purchasers who in turn deposited them on the same day in the Anglo and London-Paris National Bank as pledge for the performance of their agreement. These acts were all performed before midnight between March 22d and 23d, when the Public Utilities Act became effective.

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Section 5 of article IV of the trust deed or mortgage reads as follows:

> "The company will, upon notice given to the trustee by the holder of any of the bonds hereby secured, pay any and all taxes (other than succession or inheritance taxes) which may be imposed upon such bonds or upon such holder by reason of such ownership thereof under the laws of the United States or of any state, county or municipality thereof."

Applicant alleges that this clause was inserted in the trust deed or mortgage by inadvertence and mistake and that none of the parties affected intended that it should appear. The clause was copied from a similar clause in a trust deed of the Western States Gas and Electric Company and in the haste attendant upon putting through this bond issue before the effective date of the Public Utilities Act seems to have escaped observation. Although the bonds will command a higher price if the clause is permitted to remain, a burden apparently unexpected by any of the parties will be cast upon applicant. E. H. Rollins & Sons, the purchasers, are willing to waive their advantage, and through their attorney join in the application.

As the evidence shows that the paragraph in question was inserted by mistake or inadvertence, and as the grant of the application will be of financial benefit to applicant while not injuring the public, I recommend that relief be given as prayed for. I make no comment on the time of the authorization and issue of the bonds involved in this application. Neither do I pass on the legality of the steps heretofore taken in connection therewith nor to the proceedings which are contemplated in order to make this Commission's order effective. Applicant and E. H. Rollins & Sons will, of course, see to it that this Commission's permission is carried out in a way which shall be legally effective under the Constitution and laws of this State, and that to this end applicant's stockholders or directors take such action, if any, as may be necessary.

I submit herewith the following order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Coast Valleys Gas and Electric Company for permission to modify its trust deed or mortgage to Mercantile Trust Company of San Francisco, dated as of March 1, 1912, by striking therefrom section 5 of article IV and to issue amended bonds in lieu of the 786 bonds heretofore issued, so as to be brought within the provisions of said trust deed or mortgage so modified, and a public hearing having been duly held upon said application, and it appearing to the Commission that said section 5 of article IV of said trust deed or mortgage was inserted by inadvertence and by mistake and that said application should be granted.

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It is hereby ordered that permission be and the same is hereby granted to Coast Valleys Gas and Electric Company to modify its trust deed or mortgage dated as of March 1, 1912, by striking therefrom section 5 of article IV thereof; and

Be it further ordered that permission be and the same is hereby granted to said Coast Valleys Gas and Electric Company to issue amended bonds of the face value of one thousand ($1,000) dollars each, bearing the numbers 1 to 786, inclusive, in lieu of bonds of the same numbers heretofore issued by applicant, said bonds to show upon their face that they represent the same original indebtedness which was created prior to March 23, 1912, and to be issued under said trust deed or mortgage as so modified.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1912.

DECISION NO. 94.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING ISSUE OF BONDS OF FACE VALUE OF THREE HUNDRED FIFTY-ONE THOUSAND DOLLARS AND AMENDMENT OF TRUST MORTGAGE AND OF BONDS ISSUED THEREUNDER.

Application No. 66.

Decided June 7, 1912.

Application to refund granted, as it is to applicant's interest to cancel the outstanding indebtedness of its subsidiary corporations and should clearly be to the interest, both of applicant and of the rate paying public, to substitute bonds drawing five per cent interest for those bearing six per cent interest.

Application to amend trust deed, relieving applicant from a covenant to pay certain taxes imposed upon bondholders under the laws of the United States, or of any state, county or municipality, granted, as the present holders of bonds will not be affected by the desired change, unless they consent thereto, and as persons who may hereafter purchase such bonds, will take them in their amended form, subject to the trust deed as amended, and will, consequently not be injured, and as the grant of the relief desired will be of financial benefit to applicant while not injuring the public.

Allen Chickering, for applicant.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application on the part of Western States Gas and Electric Company for an order of this Commission authorizing:

(1) An issue of first and refunding mortgage bonds of the face value of $351,000 to refund outstanding bonds of the same face value of Stockton Gas and Electric Corporation.

(2) An amendment of applicant's trust deed and of bonds heretofore issued thereunder, when presented by the holders.

Western States Gas and Electric Company was created on November 30, 1910, under the laws of the State of California. Its total authorized capital stock is $15,000,000, divided into 150,000 shares of the par value of $100 each, of which stock $10,000,000, divided into 100,000 shares of the par value of $100 each, is preferred stock and $5,000,000, divided into 50,000 shares of the par value of $100 each is common stock. Of the authorized stock, 32,315 shares of common having a par value of $3,231,500 and 21,250 shares of preferred stock, having a par value of $2,125,000, have been issued.

By certificate of creation of bonded indebtedness filed with the Secretary of State on June 1, 1911, applicant authorized the creation of a bonded indebtedness of $10,000,000 secured by trust deed to Girard Trust Company, a Pennsylvania corporation, likewise dated June 1, 1911. Of the bonds so authorized, bonds of the face value of $2,596,000 have heretofore been issued for the purpose of refunding the bonded indebtedness of various subsidiary corporations.

In December, 1910, applicant at a cost of $5,000,000 in cash and collateral notes, acquired all the property, privileges, franchises, and assets of the Stockton Gas and Electric Corporation, Richmond Light and Power Corporation, American River Electric Company, and Humboldt Gas and Electric Company. Applicant is now selling gas and electricity in the cities of Stockton and Eureka and electricity in the counties of San Joaquin and Humboldt, and elsewhere in the State of California.

I shall not consider applicant's first prayer, which is for an order of this Commission authorizing the issue of first and refunding mortgage 5 per cent gold bonds to the extent of $351,000, to be secured by trust deed hereinbefore referred to. Applicant has arranged for the sale of these bonds at 87½, together with the accrued interest, and desires to use the proceeds, together with other funds now in its treasury, to retire first mortgage 6 per cent gold bonds of the Stockton Gas and Electric Corporation having the same face value, viz, $351,000. Stockton Gas and Electric Corporation has a total outstanding bonded

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indebtedness of $750,000 face value, of which applicant has acquired and now owns $399,000 face value. The remaining bonds, having the face value of $351,000, it is now proposed to retire, so as to permit the cancellation of the lien of the mortgage. When similar action has been taken as to the bonds of the American River Electric Company, the first mortgage and refunding bonds of applicant, which have been authorized in the amount of $10,000,000, as hereinbefore indicated, will become a first lien on all the property acquired by applicant. In view of the applicant's desire to finance additional construction from the sale of said bonds, such a consummation is a desirable one for applicant.

The redemption price of Stockton Gas and Electric Corporation bonds is 106. The difference between 87½ which applicant will realize from the sale of the bonds which it now desires to issue and the price which it will be compelled to pay to call in the Stockton Gas and Electric Corporation's outstanding bonds will be paid by applicant from moneys now in its treasury derived from the sale of securities prior to March 23, 1912.

As the granting of this application will not increase the amount of indebtedness now outstanding, and as it is to applicant's interest to cancel the outstanding indebtedness of its subsidiary corporations and clearly to the interest both of applicant and of the rate paying public to substitute bonds drawing 5 per cent interest for those bearing 6 per cent, I recommend that this portion of the application be granted.

Applicant's second prayer is for an order of this Commission authorizing applicant to amend its trust deed or mortgage to Girard Trust Company, in accordance with the supplemental trust agreement which is attached to the application and marked "Exhibit 6," to amend the bonds already outstanding when presented by the holders, and to change the form of such bonds as may hereafter be issued under said trust deed or mortgage. The supplemental agreement recites a paragraph in the form of a bond which is set out on page 4 of the printed trust deed and reads as follows:

> "The company will, upon notice given by the holder of this bond to the trustee, pay any and all taxes (other than succession or inheritance taxes) which may be imposed upon this bond or upon such holder by reason of such ownership thereof under the laws of the United States, or of any state, county or municipality thereof."

and also the provisions of section 5 of article 4 of the trust deed, in which applicant covenants to pay said taxes. The supplemental agreement further alleges that said provisions "have caused great confusion and uncertainty in the matter of determining what taxes have

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been so imposed and has worked a great hardship upon the company," recites that the holders of certain bonds now outstanding are willing to limit said provisions, and then states the proposed agreement of the parties as follows:

"*First*—That all bonds issued, certified and delivered after the date of this agreement, and all bonds heretofore issued, the holders of which shall consent and agree thereto, shall bear stamped upon the face thereof, the following:

> "Under and by virtue of the provisions of a supplemental trust agreement, between the company and the Girard Trust Company, as trustee, dated the 9th day of May, A. D. 1912, the terms of this bond are amended so that the third sentence of this bond shall read:
>
> "The company hereby covenants and agrees that it will from time to time pay to the Trustees for the holder thereof a sum sufficient to reimburse such holder for all payments made for taxes (other than succession, inheritance, transfer or income taxes) not exceeding four mills on the dollar, assessed directly by the commonwealth of Pennsylvania (but not by any county or municipality thereof), upon this bond or upon the holder thereof as a resident of said commonwealth, by reason of his or her ownership hereof. Such payment and reimbursement to be made as provided in the mortgage indenture hereinafter referred to.
>
> "Any holder, owner or purchaser of this bond takes the same subject to, and by holding, owning or purchasing the same, hereby consents to the foregoing instrument.

"*Second*—All bonds hereafter issued under said mortgage shall be so stamped by the trustee under said mortgage before the same shall be certified and delivered, and any and all bonds now issued under said mortgage may from time to time be delivered by the holder or owner to said trustee to be stamped and said trustee shall thereupon so stamp any such bonds so delivered.

"*Third*—That section 5 of article 4 of said mortgage be amended so as to read as follows:

> "The company hereby covenants and agrees that it will from time to time pay to the trustee for the holder of any of the bonds hereby secured, a sum sufficient to reimburse such holders for all payments made for taxes (other than succession, inheritance, transfer or income taxes) not exceeding four mills on the dollar, assessed directly by the commonwealth of Pennsylvania, and not by any county, or municipality thereof, upon any bond or upon the holder of any bond, as a resident of such commonwealth, by reason of his or her ownership thereof. Such payment to be made upon the written request of the holders of such bonds for such reimbursement, which request shall state the distinctive num-

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bers of said bonds upon which such taxes have been paid and shall set forth that the parties making such payment were the owners of such bonds at the date when such taxes were assessed, and that such taxes were assessed upon and paid by them as residents of the commonwealth of Pennsylvania, owning such bonds. Such request shall be made to the trustee in writing within a period of sixty (60) days from the date of payment of taxes by such holders, and where the bond or bonds upon which reimbursement is claimed are not registered, such request shall be accompanied either by the production of the bond or bonds themselves as evidence of ownership, or a certificate as provided in subdivision (*c*) of section 1 of article fourteen of this indenture. The company shall not be liable to reimburse said holders for any taxes paid by them unless such request be made within said sixty (60) days, and it shall in no event be liable to reimburse such holder or holders for any taxes paid other than those of the current tax year in which the assessment is made, or for any interest or penalty imposed upon or paid by such holders or any of them in addition to the amount of said tax as originally assessed. Upon receipt of any request for reimbursement, the trustee shall with reasonable promptness, furnish the company at its office in the city of Chicago, a copy of such request, and the company covenants that it will thereupon deposit with said trustee a sum sufficient to reimburse the holder or holders of said bonds making such request or requests for payment of said taxes as herein provided, and the trustee, upon receipt of such funds will pay to the holder or holders making such request or requests, a sum sufficient to reimburse such holder or holders for the payment of said taxes as herein provided, but only from and out of the funds so deposited with it for that purpose by the company. It is expressly understood and agreed that the trustee assumes no responsibility in any event for the performance of any of the undertakings of the company as herein contained, nor for any default in making such payments by the company; nor does it assume any responsibility in any way for reimbursing any such holder or holders for taxes paid. Its only undertaking being that it will upon deposit with it by the company of a sum sufficient to make such payments, reimburse such holder or holders, for all taxes paid as herein provided, and only out of the funds so deposited with it by the company. In addition to the remedies provided in articles ten and twelve hereof, the company, for each and every failure on its part to make reimbursement under the terms of this indenture, hereby gives to each and every bondholder entitled to reimbursement, who is not so reimbursed, a right of action against the company. The exercise of such right of action, however, by any bondholder not so reimbursed, shall not deprive such bondholder of the lien of this indenture for the payment of such reimbursement."

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As the present holders of bonds issued under said trust deed will not be affected by the desired change, unless they consent thereto and as persons who may hereafter purchase such bonds as may be issued under the authority of the Railroad Commission hereafter secured will take them in their amended form subject to the trust deed as amended and will consequently not be injured, and as the grant of the relief desired will be of financial benefit to applicant while not injuring the public, I recommend that the application be granted as prayed for.

It should be clearly understood that in giving its consent to the issuance of securities, the encumbrance of property, the amendment or modification of existing securities and encumbrances and kindred matters, this Commission does not pass upon the sufficiency or legality of the proceedings which may have been taken or which may be contemplated by applicant under the laws of this State other than the Public Utilities Act. The Commission determines whether public convenience and necessity will be subserved by the grant of the application and the terms and conditions, if any, necessary to this end. It does not determine whether the proceedings which have preceded the filing of the application or those which are contemplated thereunder apart from the Public Utilities Act are regular. It accordingly becomes unnecessary for this Commission to determine whether the amendments or modifications which applicant desires to make under its second prayer can be made without action on the part of its stockholders.

I submit herewith the following order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Western States Gas and Electric Company for the consent of the Commission to the issuance by said company of bonds to the amount of three hundred and fifty-one thousand dollars ($351,000) face value, said bonds to be payable on the first day of June, 1941, and to bear interest at 5 per cent per annum, payable semi-annually, and secured by a trust deed or mortgage upon all the property of the company, and also for the amendment of applicant's trust deed or mortgage and of bonds heretofore issued thereunder, when presented by the holders, and a hearing having been duly held upon said application, and it appearing to this Commission that the money to be secured by the issue of said bonds is necessary to and reasonably required by said company for the discharge or lawful refunding of bonds of the same face value of the Stockton Gas and Electric Corporation, a subsidiary corporation, and that the amendment of applicant's trust deed or mortgage and its bonds heretofore issued should be permitted as prayed for.

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It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by the said Western States Gas and Electric Company of three hundred and fifty-one thousand dollars ($351,000) face value of principal of bonds of that company, maturing the first day of June, 1941, redeemable at any interest date at 105 per cent of the face amount thereof, with accrued interest to the date of redemption, and to bear interest at the rate of five (5) per cent per annum, payable semiannually under and in pursuance of the terms of the trust deed or mortgage heretofore and on the first day of June, 1911, made and executed by said Western States Gas and Electric Company to the Girard Trust Company, as trustee, said bonds to be sixty (60) bonds of the face value of five hundred dollars ($500) each and numbered D 33 to D 38 inclusive, D 43 to D 52 inclusive, D 55 to D 56 inclusive, and D 59 to D 100 inclusive, and three hundred and twenty-one (321) bonds of the face value of one thousand dollars ($1,000) each and numbered M 586, M 2103 to M 2120 inclusive and M 2122 to M 2423 inclusive, upon the conditions following, and not otherwise:

(1) The Western States Gas and Electric Company shall sell the bonds hereby authorized so as to net the said company not less than eighty-seven and one half (87½) per cent of the par value of the principal thereof besides interest accrued thereon.

(2) The proceeds from the sale of said bonds shall be applied solely to purpose of retiring and cancelling bonds of the face value of three hundred and fifty-one thousand dollars ($351,000) of the Stockton Gas and Electric Corporation, a subsidiary corporation.

(3) Said company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued and on or before the tenth day of each month the company shall make a verified report to the Commission stating the sale or other disposition of such bonds during the preceding month, the terms and conditions of such sale, the moneys realized therefrom and the use and application of such moneys.

(4) The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

And it is further ordered that applicant be permitted to amend its said trust deed or mortgage dated the first day of June, 1911, and the bonds which have heretofore issued thereunder, when presented by the holders as specified in paragraphs first, second and third of said proposed supplemental trust agreement between applicant and

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Girard Trust Company and as hereinbefore set forth in the opinion in this application.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1912.

DECISION NO. 95.

IN THE MATTER OF THE APPLICATION OF SANTA MARIA VALLEY RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE, ACROSS A PUBLIC HIGHWAY IN GUADALUPE, SANTA BARBARA COUNTY, CALIFORNIA.

Application No. 48.

Decided June 8, 1912.

REPORT OF THE COMMISSION.

Santa Maria Valley Railroad Company having heretofore filed with this Commission its application for permission to construct its track at grade across the county road, a public highway, at a point hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and it further appearing that applicant has secured the necessary franchise or permit from the board of supervisors of Santa Barbara County, California, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Santa Maria Valley Railroad Company to construct its track at grade across the county road, a public highway, at a point on the right of way of the Southern Pacific Company about 2,200 feet south of the present depot of said Southern Pacific Company in the town of Guadalupe, Santa Barbara County, California; said track to be constructed across said county road about 18 feet west of the present track of the Southern Pacific Company across said road, subject to the following conditions:

(1) That the grades of approach to said crossing shall not exceed 8 per cent.

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(2) That a width of roadbed shall be constructed and maintained not less than 24 feet.

(3) The railway company shall construct and hereafter forever maintain at its own expense the said crossing in good and first-class condition for the use of the public.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing, as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 8th day of June, 1912.

DECISION NO. 96.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK AT GRADE, ACROSS THE COUNTY ROAD, A PUBLIC HIGHWAY, WEST OF TURLOCK, STANISLAUS COUNTY, CALIFORNIA.

Application No. 63.

Decided June 8, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore filed with this Commission its application for permission to construct at grade a spur track across a public highway as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and it further appearing that applicant has secured the necessary franchise or permit from the board of supervisors of Stanislaus County, California, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its track at grade across the county road, a public highway west of the town of Turlock, Stanislaus County, California, beginning at a point on the main line of the railroad of said company at engineer's line of the railroad of said company at engineer's station 1693+19.5 and thence running in an easterly and northeasterly direction across said county road and onto the property of the Standard

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Oil Company, same being located in section 15, township 5 south, range 10 east, Stanislaus County, California, subject to the following conditions:

(1) The grades of approach to said crossing shall not exceed 8 per cent.

(2) The width of roadbed at crown shall not be less than 24 feet.

(3) The railroad company shall construct and hereafter maintain said crossing in good and first-class condition for the use of the public.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 8th day of June, 1912.

DECISION NO. 97.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK AT GRADE IN PARKER STREET AND ACROSS TENTH STREET, CITY OF BERKELEY, CALIFORNIA.

Application No. 68.

Decided June 8, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore filed with this Commission its application for permission to construct at grade a spur track as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and it further appearing that applicant has secured the necessary franchise or permit from the city of Berkeley, and that said application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its track at grade commencing at a connection with its present spur track now occupying the center of Parker street, Berkeley, California, and near the east line of Ninth street,

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thence curving to the north passing off of Parker street on to private property and thence crossing Tenth street and on to private property owned by J. T. Renas, and extending to a point near the west line of San Pablo avenue, subject to the following conditions:

(1) The entire expense to complete said crossing shall be borne by the said railroad company.

(2) The railroad company shall hereafter forever maintain said crossing in good and first-class condition for the use of the public.

(3) The grades of approach to said crossing shall not exceed 8 per cent and the width of roadbed at crown shall not be less than 24 feet.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 8th day of June, 1912.

DECISION NO. 98.

IN THE MATTER OF THE APPLICATION OF ORO LIGHT AND POWER COMPANY FOR AN ORDER AUTHORIZING IT TO CHARGE AND COLLECT RATES, TOLLS AND CHARGES LESS THAN THOSE SHOWN ON ITS SCHEDULE FILED WITH THIS COMMISSION ON APRIL 11, 1912.

Application No. 91.

Decided June 8, 1912.

REPORT OF THE COMMISSION.

Oro Water Light and Power Company having filed with this Commission its application for permission to charge and collect in the seven cases specified in the application rates for water less than those shown in its published schedule of rates filed with this Commission on April 11, 1912, and this Commission having as yet been unable to make the investigation which it may hereafter make into the question of deviations of public utilities from schedules of rates filed with this Commission, and this Commission being willing in the mean time to permit applicant to make the deviations specified in its application.

It is hereby ordered that permission be and the same is hereby granted to Oro Water Light and Power Company, until the further

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order of this Commission, to charge and collect rates for water as specified in its said application less than the charges shown on its schedules on file with this Commission.

Dated at San Francisco, California, this 8th day of June, 1912.

DECISION NO. 99.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR AN ORDER AUTHORIZING IT TO CHARGE AND COLLECT RATES, TOLLS AND CHARGES LESS THAN THOSE SHOWN ON ITS SCHEDULES OF RATES FILED WITH THIS COMMISSION ON APRIL 11, 1912.

Application No. 92.

Decided June 8, 1912.

REPORT OF THE COMMISSION.

Oro Electric Corporation having filed with this Commission its application for permission to charge and collect in the cases specified in said application rates for electrical energy for light, heat and power less than those shown in its published schedule of rates filed with this Commission on April 11, 1912, and this Commission having as yet been unable to make the investigations which it may hereafter make into the question of deviations of public utilities from schedules of rates filed with this Commission, and this Commission being willing in the mean time to permit applicant to make the deviations specified in its application,

It is hereby ordered that permission be and the same is hereby granted to the Oro Electric Corporation, until the further order of this Commission, to charge and collect rates for electrical energy for light, heat and power as specified in its said application less than the charges shown in its schedules on file with this Commission.

Dated at San Francisco, California, this 8th day of June, 1912.

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DECISION NO. 100.

SCOTT, MAGNER & MILLER, JAMES L. EGAN AND WILLIAM H. EGAN, DOING BUSINESS UNDER THE NAME AND STYLE OF EGAN BROS., L. C. SHELDON AND E. S. SMITH, DOING BUSINESS UNDER THE NAME AND STYLE OF L. C. SHELDON,

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 228.

Decided June 14, 1912.

Held, That claims for refund of alleged overcharge on shipments which moved prior to February 10, 1910, are barred by the statute of limitations.

Held, That commodity rates approved by the Commission must prevail regardless of whether class rates or any combination of class and commodity rates make a lower rate.

Held, That application for reparation arising under the long and short haul provisions of the Constitution must be decided upon the evidence submitted in each particular case. Case No. 229 and 241 referred to.

J. O. Bracken, for complainants.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an action to recover alleged overcharges on shipments of hay from and to various points in California, the alleged right to such recoveries being based upon:

1. The application of class or combination of class and commodity rates where such class or combination rates are less than the commodity rates under which the traffic under consideration moved.

2. The constitutional prohibition as to charging more for a short haul than for a longer haul over the same rails in the same direction.

Shipments involved are alleged to have moved between January 16, 1910, and November 25, 1911, inclusive.

The decision and order of the Commission is subdivided into classes as follows:

1. As to shipments upon which claims for refund for alleged overcharges are barred by the statute of limitations.

2. As to shipments affected by Rule 7-A, Tariff Circular No. 1, of the California Railroad Commission.

3. As to shipments affected by the long and short haul provision of the Constitution.

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I.

Claims for refund of alleged overcharge on shipments which moved prior to February 10, 1910, are barred by the statute of limitations. (See decision of this Commission in case of *Scott, Magner & Miller* vs. *The Southern Pacific Company,* Case No. 222.)

II.

All shipments which moved between May 15, 1909, and November 15, 1910, are subject to Rule 7-A, Tariff Circular No. 1, providing that commodity rates, when in effect, must prevail regardless of whether class rates, or any combination of class and commodity rates, make a lower rate. Complainant claims that, notwithstanding that this rule of the Commission was in effect between May 15, 1909, and November 15, 1910, inasmuch as the Southern Pacific Company published a tariff circular, effective on and between those dates, giving class rates which were lower than the commodity rates, he is entitled to such lower rates, although the circular was plainly in conflict with the Commission's order. This contention may be dismissed without comment further than to say that to grant it would be an admission of the carrier's right to disregard rules and orders of the Commission, whereas the most that can be said for it would be to claim that it was practically an admission on the part of the carrier that its commodity rates were unreasonable.

All shipments comprehended in this complaint under Class 2 which moved subsequent to November 15, 1910, are entitled to class rates or any combination of rates or commodity rates which make lower than the published through commodity rates. Complainant and defendant are given twenty days from date hereof in which to agree as to which shipments so moved upon which reparation might be awarded under this decision. Should they fail to agree, it is directed that they come before the Commission again, whereupon the Commission will make a supplemental order specifically designating the claims upon which reparation is to be awarded under this decision.

III.

Our decision and order in this case with reference to subdivision 3—viz: the application of the long and short haul clause—is in consonance with the policy announced in the decision and order in cases 229 and 241, to wit, to decide each case upon the evidence submitted in that particular case.

In order that there may be no misunderstanding as to the Commission's order and decision affecting shipments originating at points west of Tracy on the Port Costa line, and destined to points between Oakland and San Jose, via either the Niles or Newark line, it

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is held that rates from Tracy to San Jose apply only as a maximum to intermediate points, via Livermore and Niles, and not via the circuitous route through Martinez and Oakland. On all shipments originating at Tracy or points west thereof on the Niles or Livermore line, destined to San Francisco or Oakland, the Tracy to San Francisco or Oakland rate will be held as a maximum, and on such shipments as shown by the record to have been made and set forth in a statement designated Statement No. 1, which is hereunto attached and made a part of this decision and order, it is held that complainants are entitled to recover as reparation the difference between the rate applied on such shipments and the rate arising from the application of the Tracy to Oakland or San Francisco rate, amounting in the aggregate to $2,150.30, as shown by Statement No. 1 above referred to; and defendant is hereby directed to pay to complainant the said sum of twenty-one hundred and fifty and 30/100 dollars as reparation on such shipments.

It is noted that shipments originating at Bethany destined to San Leandro, Melrose, Alvarado and Santa Clara are alleged by the complainant to be subject to the Tracy-San Jose rate as a maximum, but these cases and all similar cases will not be allowed for the reasons before stated—that the Tracy-San Jose rate is held not a maximum from intermediate points via this route.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1912.

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STATEMENT 1.

Statement of Overcharges in Case No. 228.

L. C. SHELDON.

From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	San Francisco	1906—5/30/11	LW—32525	23,200 lbs.	$16 24
Livermore	San Francisco	1796—5/19/11	UP—68604	17,680 lbs.	12 38
Livermore	San Francisco	1766—5/17/11	OSL— 9300	27,420 lbs.	19 19
Livermore	San Francisco	1638—5/5/11	UP—66054	17,000 lbs.	11 90
Livermore	San Francisco	1315—4/11/11	GH—31752	22,240 lbs.	15 57
Livermore	San Francisco	1293—4/8/11	SP—66431	19,000 lbs.	13 30
Livermore	San Francisco	1290—4/8/11	SP—69691	19,000 lbs.	13 30
Livermore	San Francisco	1248—4/6/11	SP—69515	19,000 lbs.	13 30
Livermore	San Francisco	1247—4/6/11	UP—68472	17,020 lbs.	11 91
Livermore	San Francisco	1227—4/5/11	UP—66156	17,570 lbs.	12 30
Livermore	San Francisco	1215—4/4/11	SP—70115	19,000 lbs.	13 30
Livermore	San Francisco	1214—4/4/11	UP—73774	26,580 lbs.	18 61
Livermore	San Francisco	1082—3/23/11	UP—67277	17,000 lbs.	11 90
Livermore	San Francisco	724—2/24/11	MLT—32668	24,230 lbs.	16 96
Livermore	San Francisco	642—2/17/11	SP—70567	19,000 lbs.	13 30
Livermore	San Francisco	612—2/15/11	TNO—31328	23,210 lbs.	16 25
Livermore	San Francisco	295—1/24/11	UP—70384	25,000 lbs.	17 50
Livermore	San Francisco	271—1/21/11	UP—73799	25,810 lbs.	18 07
Livermore	San Francisco	121—1/11/11	UP—73878	24,070 lbs.	16 85
Livermore	San Francisco	109—1/10/11	UP—72692	24,170 lbs.	16 92
Livermore	San Francisco	99—1/9/11	UP—66040	18,000 lbs.	12 60
Livermore	San Francisco	64—1/6/11	UP—70631	24,820 lbs.	17 37
Livermore	San Francisco	50—1/5/11	UP—68898	17,000 lbs.	11 90
Livermore	San Francisco	59—1/5/11	UP—67362	17,000 lbs.	11 90
Livermore	San Francisco	30—1/4/11	UP—67858	18,430 lbs.	12 90
Livermore	San Francisco	28—1/4/11	UP—67209	17,860 lbs.	12 50
Livermore	San Francisco	27—1/4/11	UP—68063	17,130 lbs.	11 99
				557,440 lbs.	$390 21
Should be 557,440 lbs. at $1.15					320 53
Overcharge					$69 68
Altamont	Oakland	149—3/25/11	TNO—10862	20,000 lbs.	$14 00
Altamont	Oakland	74—2/17/11	TNO—12356	20,200 lbs.	14 14
Altamont	Oakland	119—3/16/11	HTC—11526	26,000 lbs.	18 20
Altamont	Oakland	40—2/7/11	HTC—11647	28,660 lbs.	20 06
Altamont	Oakland	327—5/20/11	SP—80473	20,000 lbs.	14 00
Altamont	Oakland	301—6/15/11	LW—33681	27,100 lbs.	18 97
Altamont	Oakland	104—3/1/11	LW—33818	27,200 lbs.	19 04
				169,160 lbs.	$118 41
Should be 169,160 lbs. at $1.15					97 27
Overcharge					$21 14

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

L. C. SHELDON.

From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	Hayward	5175—12 12 10	SP—72467	19,000 lbs.	$11 40
Livermore	Fruitvale	5163—12 30 10	SP—66096	19,000 lbs.	11 40
Livermore	Fruitvale	191—1 17 11	SP—70595	19,250 lbs.	11 55
Livermore	Fruitvale	6—1 3 11	GH—10438	19,250 lbs.	11 55
Livermore	Melrose	5436—12 29 10	HTC—10118	17,000 lbs.	10 20
Livermore	Melrose	146—1 12 11	MLT—12454	19,000 lbs.	11 40
Livermore	Melrose	5437—12 29 10	UP—66388	18,550 lbs.	11 13
				131,050 lbs.	$78 63
Should be 131,050 lbs. at $1.15					75 35
Overcharge					$3 28
Altamont	San Jose	552—12 30 10	UP—82153	31,600 lbs.	$21 33
Altamont	San Jose	521—12 30 10	SP—38814	19,000 lbs.	12 83
				50,600 lbs.	$34 16
Should be 50,600 lbs. at $1.15					29 10
Overcharge					$5 06
Livermore	Stockyards	1745—5 15 11	SP—88321	27,050 lbs.	$20 76
Livermore	Stockyards	1905—5 30 11	OSL— 9267	26,780 lbs.	20 58
				53,830 lbs.	$41 34
Should be 53,830 lbs. ÷ $2.50 at $1.15 ton car					35 95
Overcharge					$5 39
Pleasanton	West Berkeley	413—3 2 11	TNO—31398	21,270 lbs.	$15 25
Pleasanton	West Berkeley	803—5 6 11	OW—10006	24,700 lbs.	17 32
Pleasanton	West Berkeley	452—3 11/11	MLT—30500	20,000 lbs.	14 50
Pleasanton	West Berkeley	465—3 13/11	SP—81621	22,300 lbs.	15 88
				88,270 lbs.	$62 95
Should be 88,270 lbs. ÷ $2.50 at $1.15 ton car					$50 75
Overcharge					$12 20
Oakland combination.					
Pleasanton	Oakland	926—5 27 11	SP—20640	20,000 lbs.	$12 00
Pleasanton	Oakland	1126—7 6 11	LW—32956	22,850 lbs.	13 71
Pleasanton	Oakland	1150—7 10 11	SP—70420	19,000 lbs.	11 40
Pleasanton	Oakland	1127—7 6 11	UP—72570	22,800 lbs.	13 68
Pleasanton	Oakland	1099—6 29 11	SP—82029	20,050 lbs.	12 03
Pleasanton	Oakland	1096—6 28 11	SP—80328	20,200 lbs.	12 12
Pleasanton	Oakland	1100—6 29 11	SP—80303	23,600 lbs.	14 16
Pleasanton	Oakland	1074—6 23 11	SP—88987	24,620 lbs.	14 77
Pleasanton	Oakland	1113—7 3 11	SP—86116	22,290 lbs.	13 37
				195,410 lbs.	$117 24
Should be 195,410 lbs. at $1.15					112 36
Overcharge					$4 88

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

L. C. SHELDON.

From.	To.	Waybill.	Car.	Weight.	Charges.
Sunol	San Francisco	844—12/22/10	ORN—10854	29,960 lbs.	$17 98
Sunol	San Francisco	818—12/5/10	LW—30762	22,720 lbs.	13 63
Sunol	San Francisco	817—12/5/10	SP—21108	29,570 lbs.	17 74
Sunol	San Francisco	812—12/3/10	SP—70363	21,380 lbs.	12 83
Sunol	San Francisco	821—12/6/10	SP—70568	20,710 lbs.	12 46
Sunol	San Francisco	795—11/17/10	UP—72512	28,070 lbs.	16 84
Sunol	San Francisco	807—12/1/10	SP—66040	21,010 lbs.	12 61
Sunol	San Francisco	796—11/17/10	HEWT— 924	24,960 lbs.	14 98
Sunol	San Francisco	793—11/16/10	SP—82830	21,310 lbs.	12 79
Sunol	San Francisco	824—12/7/10	UP—67216	18,930 lbs.	11 36
Sunol	San Francisco	822—12/6/10	UP—68345	19,470 lbs.	11 68
Sunol	San Francisco	798—11/18/10	SP—33349	23,560 lbs.	14 14
				281,650 lbs.	$169 04
Should be 281,650 lbs. at $1.15					161 95
Overcharge					$7 09

Midway	San Francisco	28—6/27/11	ORN—10649	25,450 lbs.	$18 45
Midway	San Francisco	75—4/19/11	ORN—10715	25,400 lbs.	18 42
Midway	San Francisco	76—4/22/11	GH—12504	19,000 lbs.	13 78
Midway	San Francisco	114—5/18/11	ORN—10856	27,260 lbs.	19 76
Midway	San Francisco	122—5/25/11	OSL—10124	25,470 lbs.	18 47
Midway	San Francisco	40—6/10/11	ORN—11431	23,560 lbs.	17 08
Midway	San Francisco	82—4/26/11	SP—17243	26,850 lbs.	19 27
Midway	San Francisco	78—4/25/11	MLT—30163	20,000 lbs.	14 50
Midway	San Francisco	121—5/25/11	MLT—30362	20,000 lbs.	14 50
Midway	San Francisco	79—4/25/11	MLT—30286	20,360 lbs.	14 76
Midway	San Francisco	36—6/9/11	SP—86390	20,000 lbs.	14 50
Midway	San Francisco	70—4/29/11	SP—88626	24,910 lbs.	18 06
Midway	San Francisco	69—4/11/11	OSL— 1061	24,730 lbs.	17 93
Midway	San Francisco	20—6/5/11	UP—67648	17,910 lbs.	12 98
Midway	San Francisco	24—6/6/11	TNO— 9808	17,000 lbs.	12 33
Midway	San Francisco	61—4/6/11	UP—68274	17,750 lbs.	12 87
Midway	San Francisco	23—6/6/11	UP—68199	17,000 lbs.	12 33
Midway	San Francisco	31—6/8/11	SP—69186	19,000 lbs.	13 78
Midway	San Francisco	37—6/9/11	SP—70308	19,000 lbs.	13 78
Midway	San Francisco	42—6/10/11	UP—70996	24,020 lbs.	17 41
Midway	San Francisco	128—6/2/11	SP—72504	19,000 lbs.	13 78
Midway	San Francisco	132—6/3/11	UP—70849	25,250 lbs.	18 30
Midway	San Francisco	33—6/8/11	UP—72603	24,230 lbs.	17 57
Midway	San Francisco	71—5/2/11	UP—66480	17,000 lbs.	12 33
Midway	San Francisco	34—6/9/11	UP—66718	17,000 lbs.	12 33
Midway	San Francisco	28—6/7/11	SP—83527	20,000 lbs.	14 50
Midway	San Francisco	131—6/3/11	SP—83101	20,000 lbs.	14 50
Midway	San Francisco	60—4/6/11	SP—83499	21,300 lbs.	15 44
Midway	San Francisco	41—6/10/11	SP—84475	22,070 lbs.	16 00
Midway	San Francisco	66—4/10/11	CP—84813	23,780 lbs.	17 24
Midway	San Francisco	38—6/10/11	SP—85605	24,120 lbs.	17 49
Midway	San Francisco	19—6/5/11	SP—61091	19,000 lbs.	13 78
Midway	San Francisco	77—4/22/11	UP—65422	17,300 lbs.	12 54
				707,960 lbs.	$510 76
Should be 707,960 lbs. at $1.15					407 08
Overcharge					$103 68

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

L. C. SHELDON.

From.	To.	Waybill.	Car.	Weight.	Charges.
Pleasanton	San Francisco	475—3/13/11	ORN—10011	27,520 lbs.	$18 58
Pleasanton	San Francisco	996—6/9/11	LW—10653	19,000 lbs.	12 83
Pleasanton	San Francisco	464—3/13/11	MLT—30476	21,590 lbs.	14 57
Pleasanton	San Francisco	871—5/19/11	UP—71465	26,330 lbs.	17 77
Pleasanton	San Francisco	533—3/13/11	SP—16855	27,110 lbs.	18 30
Pleasanton	San Francisco	988—6/7/11	UP—67176	17,000 lbs.	11 48
Pleasanton	San Francisco	981—6/7/11	UP—70205	25,530 lbs.	17 23
Pleasanton	San Francisco	1003—6/10/11	CBQ—32778	19,000 lbs.	12 83
Pleasanton	San Francisco	849—5/15/11	SP—85970	26,850 lbs.	18 12
Pleasanton	San Francisco	840—5/13/11	SP—81689	24,300 lbs.	16 40
Pleasanton	San Francisco	829—5/11/11	SP—81376	24,000 lbs.	16 20
Pleasanton	San Francisco	450—3/11/11	SP—80099	21,200 lbs.	14 31
Pleasanton	San Francisco	423—3/3/11	SP—84886	26,120 lbs.	17 63
Pleasanton	San Francisco	985—6/7/11	SP—85251	26,910 lbs.	18 16
Pleasanton	San Francisco	954—6/1/11	UP—72322	24,590 lbs.	16 60
Pleasanton	San Francisco	969—6/3/11	SP—64623	19,000 lbs.	12 83
Pleasanton	San Francisco	451—3/11/11	SP—65855	19,800 lbs.	13 37
				395,850 lbs.	$267 21
Should be 395,850 lbs. at $1.15					227 61
Overcharge					$39 60
Midway	Fruitvale	17—6/1/11	UP—67333	17,000 lbs.	$12 32
Midway	Fruitvale	16—6/1/11	GH—31692	22,770 lbs.	16 51
Midway	Elmhurst	113—5/18/11	GH—12561	19,000 lbs.	13 78
Midway	Melrose	103—5/9/11	SP—81878	27,470 lbs.	19 92
Midway	Melrose	10—5/22/11	OSL— 9548	23,700 lbs.	17 18
Midway	Melrose	9—5/22/11	UP—72294	24,050 lbs.	17 44
Midway	Fruitvale	12—5/22/11	SP—69751	19,000 lbs.	13 70
Midway	Fruitvale	11—5/22/11	SP—85859	24,200 lbs.	17 55
Midway	Elmhurst	80—4/26/11	SP—66734	17,000 lbs.	12 33
				194,190 lbs.	$140 73
Should be 194,190 lbs. at $1.15					111 66
Overcharge					$29 67

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

L. C. SHELDON.

From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	Alameda	1955—6/2/11	LW—30808	20,000 lbs.	$13 50
Livermore	Oakland	1922—5/31/11	GH—10326	19,000 lbs.	12 83
Livermore	Oakland	1794—5/19/11	O&C—68648	19,000 lbs.	12 83
Livermore	Oakland	1765—5/17/11	HTC— 9207	20,550 lbs.	13 87
Livermore	Oakland	1756—6/16/11	UP—72322	26,450 lbs.	17 85
Livermore	Oakland	1755—6/16/11	ORN—10855	26,050 lbs.	17 58
Livermore	Oakland	110—1/10/11	MLT—31980	25,300 lbs.	17 08
Livermore	Oakland	126—1/11/11	MLT—32004	25,130 lbs.	16 96
Livermore	Oakland	221—1/19/11	LW—32615	25,970 lbs.	17 53
Livermore	Oakland	5133—12/29/10	SP—66769	19,700 lbs.	13 30
Livermore	Oakland	142—1/12/11	UP—66258	18,600 lbs.	12 56
Livermore	Oakland	5390—12/24/10	UP—66343	18,250 lbs.	12 32
Livermore	Oakland	5120—12/9/10	UP—66000	17,760 lbs.	11 99
Livermore	Oakland	127—1/11/11	UP—73697	28,100 lbs.	19 17
Livermore	Oakland	5135—12/29/10	UP—73007	25,260 lbs.	17 04
Livermore	Oakland	128—1/11/11	SP—70538	19,150 lbs.	13 13
Livermore	Oakland	5306—12/20/10	UP—68241	17,100 lbs.	11 75
Livermore	Oakland	5469—12/21/10	UP—68241	19,350 lbs.	13 06
Livermore	Oakland	5117—12/10/10	SP—21246	25,000 lbs.	16 88
Livermore	Oakland	141—1/12/11	PRR—16977	24,100 lbs.	16 27
Livermore	Oakland	5212—12/14/10	HTC—11717	22,350 lbs.	15 09
Livermore	Oakland	5213—12/14/10	HTC—11428	25,370 lbs.	17 12
Livermore	Oakland	5148—12/10/10	ORN—12191	26,650 lbs.	17 31
Livermore	Oakland	5434—12/29/10	ORN—10929	26,750 lbs.	18 06
				541,840 lbs.	$365 08
Should be 541,840 lbs. at $1.15					310 92
Overcharge					$54 16
Livermore	Alameda	1942—6 1/11	OSL—10192	26,890 lbs.	$18 15
Livermore	Alameda	24—1 4/11	UP—66805	17,200 lbs.	12 04
				44,090 lbs.	$30 19
Should be 44,090 lbs. at $1.15					25 35
Overcharge					$4 84
Midway	Alameda	47—6 12/11	UP—73593	23,700 lbs.	$17 18
Should be 23,700 lbs. at $1.15					13 63
Overcharge					$3 55

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STATEMENT 1—Concluded.

Statement of Overcharges in Case No. 228.

L. C. SHELDON.

From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	San Francisco	162 -1/13/11	CGW—14336	20,000 lbs.	$14 00
Livermore	San Francisco	597—2/11/11	HTC— 9322	17,200 lbs.	12 04
Livermore	San Francisco	610—2/15/11	UP—67344	17,000 lbs.	11 90
Livermore	San Francisco	1817—5/21/11	CMStP—24830	23,860 lbs.	16 70
Livermore	San Francisco	1857—5/25/11	SP—87528	26,120 lbs.	18 28
Livermore	San Francisco	1872—5/26/11	TNO—31401	24,290 lbs.	17 00
Livermore	San Francisco	1828—5/23/11	SP—81379	23,440 lbs.	16 41
Livermore	San Francisco	1897—5/28/11	GH—31619	23,160 lbs.	16 22
Livermore	San Francisco	1885—5/27/11	HTC— 7179	19,000 lbs.	13 30
Livermore	San Francisco	1959—6/2/11	UP—65270	17,810 lbs.	12 47
Livermore	San Francisco	1973—6/3/11	SP—69820	19,000 lbs.	13 30
Livermore	San Francisco	98—1/9/11	TNO—13307	19,000 lbs.	13 30
Livermore	San Francisco	11—1/4/11	GH—10321	19,000 lbs.	13 30
Livermore	San Francisco	740—2/25/11	LW—12169	19,000 lbs.	13 30
Livermore	San Francisco	1731—5/13/11	ORN—12070	26,540 lbs.	18 58
Livermore	San Francisco	29—1/4/11	LW—10550	19,990 lbs.	13 99
Livermore	San Francisco	5468—12/31/10	MLT—12414	19,000 lbs.	13 30
Livermore	San Francisco	87—1/7/11	ORN—11287	25,050 lbs.	17 54
Livermore	San Francisco	316—1/25/11	ORN—11610	25,490 lbs.	17 84
Livermore	San Francisco	1316—4/11/11	GH—11808	19,000 lbs.	13 30
Livermore	San Francisco	678—2/21/11	GH—11777	19,000 lbs.	13 30
Livermore	San Francisco	259—1/20/11	MLT—30675	20,000 lbs.	14 00
Livermore	San Francisco	4947—11/26/10	IC—130740	23,720 lbs.	16 60
Livermore	San Francisco	1277—4/7/11	SP—21580	26,230 lbs.	18 36
Livermore	San Francisco	1908—5/30/11	SP—20840	25,610 lbs.	17 93
Livermore	San Francisco	1314—4/11/11	MLT—30085	21,040 lbs.	14 73
Livermore	San Francisco	86—1/7/11	MLT—30142	21,990 lbs.	15 39
Livermore	San Francisco	1278—4/7/11	MLT—32747	26,600 lbs.	18 62
Livermore	San Francisco	4980—11/29/10	MLT—32683	25,910 lbs.	18 14
Livermore	San Francisco	63—1/6/11	UP—71501	24,360 lbs.	17 05
Livermore	San Francisco	1216—4/4/11	SP—86329	25,480 lbs.	17 84
Livermore	San Francisco	1081—3/23/11	SP—87159	24,280 lbs.	17 00
Livermore	San Francisco	393—1/31/11	SP—87353	21,310 lbs.	14 92
Livermore	San Francisco	1722—5/13/11	OSL— 9203	25,640 lbs.	17 95
Livermore	San Francisco	349—1/27/11	OSL— 9256	25,350 lbs.	17 95
				779,470 lbs.	$545 85
Should be 779,470 lbs. at $1.15					448 20
Overcharge					$97 65
Total overcharge					$451 27

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STATEMENT 1.

Statement of Overcharges In Case No. 228.

EGAN BROS.

From.	To.	Waybill.	Car.	Weight.	Charges.
Altamont	San Francisco	323—4/20/11	SP—17192	29,600 lbs.	$21 46
Altamont	San Francisco	224—4/20/11	OSL— 9361	24,900 lbs.	18 05
Altamont	San Francisco	222—4/20/11	UP—71792	25,000 lbs.	18 13
Altamont	San Francisco	324—4/20/11	LW—12729	19,000 lbs.	13 78
Altamont	San Francisco	340—5/25/11	HEWT— 2033	25,200 lbs.	18 27
Altamont	San Francisco	339—5/25/11	ORN—10227	22,500 lbs.	16 31
Altamont	San Francisco	342—5/25/11	SP—88853	22,800 lbs.	16 53
Altamont	San Francisco	415—7/12/11	SP—82055	21,050 lbs.	15 26
Altamont	San Francisco	458—9/23/11	MLT—32182	22,650 lbs.	16 42
Altamont	San Francisco	454—9/22/11	SP—89187	28,870 lbs.	20 93
Altamont	San Francisco	451—9/21/11	OW—12724	34,950 lbs.	25 34
Altamont	San Francisco	425—7/18/11	MLT—30023	21,290 lbs.	15 44
Altamont	San Francisco	424—7/16/11	ORN—10906	24,370 lbs.	17 67
Altamont	San Francisco	422—7/15/11	SP—80766	20,700 lbs.	15 01
Altamont	San Francisco	421—7/15/11	LW—33731	24,260 lbs.	17 59
Altamont	San Francisco	420—7/14/11	LW—32545	20,710 lbs.	15 01
Altamont	San Francisco	419—7/13/11	SP—70117	19,010 lbs.	13 78
Altamont	San Francisco	418—7/13/11	SP—70068	19,410 lbs.	14 07
Altamont	San Francisco	414—7/11/11	OSL—10306	29,890 lbs.	21 67
Altamont	San Francisco	413—7/11/11	SP—83275	21,850 lbs.	15 84
Altamont	San Francisco	417—7/13/11	UP—67282	18,160 lbs.	13 17
Altamont	San Francisco	410—7/7/11	GH—12554	19,000 lbs.	13 78
Altamont	San Francisco	409—7/5/11	SP—82282	21,360 lbs.	15 49
Altamont	San Francisco	408—7/5/11	SP—86992	26,300 lbs.	19 21
Altamont	San Francisco	285—5/13/11	MLT— 8149	17,870 lbs.	12 96
Altamont	San Francisco	270—5/11/11	UP—66352	18,870 lbs.	13 68
Altamont	San Francisco	226—4/21/11	UP—68751	18,590 lbs.	13 48
Cayley	San Francisco	2—8/7/11	SP—87278	24,780 lbs.	17 97
Altamont	San Francisco	407—7/3/11	SP—64996	19,170 lbs.	13 90
Altamont	San Francisco	412—7/10/11	MLT—30372	22,890 lbs.	16 60
Altamont	San Francisco	439—8/11/11	UP—67120	17,000 lbs.	12 33
Altamont	San Francisco	250—5/5/11	SP—70022	19,570 lbs.	14 19
Altamont	San Francisco	128—3/20/11	MLT—33478	24,000 lbs.	17 40
Altamont	San Francisco	356—5/27/11	SP—86620	25,110 lbs.	18 44
Altamont	San Francisco	343—5/25/11	HEWT— 746	19,000 lbs.	13 78
Altamont	San Francisco	346—5/26/11	SP—88742	27,550 lbs.	19 97
Altamont	San Francisco	322—5/20/11	TNO—31413	22,740 lbs.	16 49
Altamont	San Francisco	336—5/23/11	LW—30849	20,000 lbs.	14 50
Altamont	San Francisco	255—5/8/11	ORN—10664	27,390 lbs.	19 86
Altamont	San Francisco	257—5/10/11	TNO—31154	24,830 lbs.	18 00
Altamont	San Francisco	277—5/12/11	SP—65871	20,250 lbs.	14 68
Altamont	San Francisco	284—5/13/11	O&C—60603	25,810 lbs.	18 71
Altamont	San Francisco	341—5/25/11	UP—73953	26,100 lbs.	19 14
Altamont	San Francisco	460—9/28/11	UP—72274	29,590 lbs.	21 45
Altamont	San Francisco	461—9/28/11	SP—88661	29,100 lbs.	21 32
Altamont	San Francisco	467—12/7/10	OSL— 9164	27,810 lbs.	20 18
Altamont	San Francisco	470—12/8/10	SP—64706	20,160 lbs.	14 83
Altamont	San Francisco	468—12/7/10	UP—68901	17,780 lbs.	12 89
Altamont	San Francisco	469—12/10/10	SP—86554	28,030 lbs.	20 32
Altamont	San Francisco	455—11/19/10	OSL— 9221	24,840 lbs.	18 00
Altamont	San Francisco	454—11/19/10	MLT—14276	25,560 lbs.	18 53
Altamont	San Francisco	474—12/9/10	GH—31298	27,900 lbs.	20 23
Altamont	San Francisco	519—12/28/10	UP—73981	27,910 lbs.	20 23
Altamont	San Francisco	516—12/23/10	SP—66373	19,000 lbs.	13 78
Altamont	San Francisco	1—1/3/11	MLT—30219	20,070 lbs.	14 55
Altamont	San Francisco	517—12/27/10	UP—73511	27,620 lbs.	20 02
Altamont	San Francisco	460—11/24/11	SP—80666	21,160 lbs.	14 81
Altamont	San Francisco	2—1/3/11	SP—16952	24,310 lbs.	17 62

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

EGAN BROS.

From.	To.	Waybill.	Car.	Weight.	Charges.
Altamont	San Francisco	1317—9 2 11	UP—67456	17,690 lbs.	$12 83
Altamont	San Francisco	90—9 5 11	TNO—12318	19,000 lbs.	13 78
Altamont	San Francisco	89—9 2 11	UP—70197	20,560 lbs.	14 91
Altamont	San Francisco	86—8 31 11	O&C—88571	24,610 lbs.	17 84
Altamont	San Francisco	85—8 30 11	UP—65141	17,000 lbs.	12 33
Altamont	San Francisco	42—1 7 11	HTC—9458	17,000 lbs.	12 33
Altamont	San Francisco	15—1 12 11	SP—20657	20,000 lbs.	14 50
Altamont	San Francisco	14—1 11 11	UP—61705	21,000 lbs.	15 23
Altamont	San Francisco	13—1 11 11	SP—80592	20,000 lbs.	14 50
Altamont	San Francisco	12—1 10 11	MLT—33580	20,910 lbs.	15 16
Altamont	San Francisco	11—1 9 11	SP—38577	15,000 lbs.	10 88
Altamont	San Francisco	10—1 9 11	UP—68020	17,000 lbs.	12 33
Midway	San Francisco	9—1 9 11	MLT—30714	20,000 lbs.	14 50
Midway	San Francisco	6—1 5 11	UP—73391	27,000 lbs.	19 58
Midway	San Francisco	5—1 5 11	SP—87679	22,490 lbs.	16 30
Midway	San Francisco	4—1 4 11	SP—72800	19,000 lbs.	13 78
Midway	San Francisco	3—1 4 11	SP—38816	15,000 lbs.	10 88
Midway	San Francisco	2—1 4 11	SP—73908	19,000 lbs.	13 78
Midway	San Francisco	1—1 3 11	SP—38378	15,000 lbs.	10 88
				1,723,710 lbs.	$1249 37
Should be 1,723,710 lbs. at $1.15					991 14
Overcharge					$258 23

Livermore	San Francisco	430—2 3 11	MLT—30090	21,800 lbs.	$15 26
Livermore	San Francisco	498—2 8 11	UP—71197	24,890 lbs.	17 42
Livermore	San Francisco	544—2 10 11	SP—82836	20,420 lbs.	14 29
Livermore	San Francisco	563—2 11 11	SP—82335	20,800 lbs.	14 56
Livermore	San Francisco	545—2 10 11	SP—83520	20,620 lbs.	14 43
Livermore	San Francisco	623—2 16 11	ORN—6457	17,000 lbs.	11 90
Livermore	San Francisco	2159—6 19 11	SP—81776	24,490 lbs.	17 14
Livermore	San Francisco	1148—4 19 11	UP—70365	27,290 lbs.	19 10
Livermore	San Francisco	1292—4 8 11	TNO—10738	19,000 lbs.	13 30
Livermore	San Francisco	1303—4 9 11	SP—38902	16,450 lbs.	11 52
Livermore	San Francisco	1276—4 7 11	UP—68573	17,000 lbs.	11 90
Livermore	San Francisco	1246—4 6 11	UP—73960	25,190 lbs.	17 63
Livermore	San Francisco	1166—3 30 11	ORN—10004	26,060 lbs.	18 24
Livermore	San Francisco	1495—4 22 11	ORN—11292	20,400 lbs.	14 28
Livermore	San Francisco	1478—4 21 11	UP—66525	17,000 lbs.	11 90
Livermore	San Francisco	1447—4 19 11	SP—83742	21,250 lbs.	14 88
Livermore	San Francisco	639—2 17 11	SP—64740	19,000 lbs.	13 30
Livermore	San Francisco	967—3 16 11	UP—68838	17,900 lbs.	12 53
Livermore	San Francisco	966—3 16 11	UP—68290	17,820 lbs.	12 47
Livermore	San Francisco	1496—4 22 11	SP—38707	16,050 lbs.	11 24
Livermore	San Francisco	2832—8 24 11	SP—66154	20,300 lbs.	14 21
Livermore	San Francisco	5233—12 19 10	ATSF—30590	20,000 lbs.	14 00
Livermore	San Francisco	5272—12 17 10	HTC—7300	19,000 lbs.	13 30
Livermore	San Francisco	5239—12 16 10	ORN—7071	17,030 lbs.	11 92
Livermore	San Francisco	5228—12 15 10	UP—68451	17,000 lbs.	11 90
Livermore	San Francisco	5238—12 16 10	SP—38899	15,770 lbs.	11 04
Livermore	San Francisco	4920—11 23 10	MS—24196	22,970 lbs.	16 08
Livermore	San Francisco	88—1 7 11	TNO—10745	19,000 lbs.	13 30
Livermore	San Francisco	8—1 3 11	ORN—10827	28,250 lbs.	19 78
Livermore	San Francisco	624—2 16 11	SP—82148	20,730 lbs.	14 51
Livermore	San Francisco	625—2 16 11	UP—67732	17,000 lbs.	11 90
Livermore	San Francisco	627—2 16 11	SP—65751	19,200 lbs.	13 44

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STATEMENT 1—Continued.

Statement of Overcharges In Case No. 228.

EGAN BROS.

From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	San Francisco	598—2/15/11	GH—11843	19,000 lbs.	$13 30
Livermore	San Francisco	608—2/15/11	TNO—11631	19,000 lbs.	13 30
Livermore	San Francisco	626—2/16/11	SP—70258	19,080 lbs.	13 36
Livermore	San Francisco	609—2/15/11	TNO—31248	24,800 lbs.	17 36
Livermore	San Francisco	595—2/15/11	UP—67508	17,160 lbs.	12 01
Livermore	San Francisco	741—2/25/11	UP—66050	17,190 lbs.	12 03
Livermore	San Francisco	3062—9/21/11	ORM—10381	25,000 lbs.	17 50
Livermore	San Francisco	2869—8/29/11	UP—70416	27,200 lbs.	19 04
Livermore	San Francisco	2827—8/23/11	MLT—33164	29,000 lbs.	20 30
Livermore	San Francisco	2274—6/30/11	OWRN—13336	26,270 lbs.	18 39
Livermore	San Francisco	2273—6/30/11	SP—84819	26,150 lbs.	18 30
Livermore	San Francisco	2220—6/24/11	UP—67490	17,530 lbs.	12 27
Livermore	San Francisco	2197—6/22/11	GH—10466	19,000 lbs.	13 30
Livermore	San Francisco	2196—6/20/11	SP—66345	19,000 lbs.	13 30
Livermore	San Francisco	1469—4/20/11	SP—33356	23,270 lbs.	16 28
Livermore	San Francisco	641—2/17/11	MLT—33231	24,260 lbs.	16 98
Livermore	San Francisco	485—2/7/11	SP—66298	19,000 lbs.	13 30
Livermore	San Francisco	484—2/7/11	SP—83759	20,380 lbs.	14 27
Livermore	San Francisco	449—2/4/11	SP—83316	21,620 lbs.	15 13
Livermore	San Francisco	384—1/30/11	UP—65890	17,840 lbs.	12 49
Livermore	San Francisco	391—1/31/11	LW—32947	23,910 lbs.	16 74
Livermore	San Francisco	385—1/30/11	SP—82055	21,640 lbs.	15 15
Livermore	San Francisco	392—1/31/11	OSL— 9567	24,190 lbs.	16 93
Livermore	San Francisco	5291—12/19/10	SP—73865	19,000 lbs.	13 30
Livermore	San Francisco	334—1/26/11	GH—10192	19,470 lbs.	13 63
Livermore	San Francisco	291—1/24/11	SP—87084	27,060 lbs.	18 94
Livermore	San Francisco	282—1/23/11	SP— 83114	20,820 lbs.	14 57
Livermore	San Francisco	219—1/19/11	SP—69338	19,110 lbs.	13 61
Livermore	San Francisco	3278—10/10/11	SP—32866	24,630 lbs.	17 24
Livermore	San Francisco	3277—10/10/11	GH—31515	27,880 lbs.	19 52
Livermore	San Francisco	3140—10/24/11	SP—94956	28,140 lbs.	19 70
Livermore	San Francisco	3442—10/24/11	OSL—12972	28,040 lbs.	19 63
Livermore	San Francisco	3441—10/24/11	OSL—12964	19,060 lbs.	13 72
Livermore	San Francisco	2451—10/25/11	UP—68830	22,490 lbs.	15 64
Livermore	San Francisco	3465—10/26/11	SP—32976	28,700 lbs.	20 09
Livermore	San Francisco	5146—12/1/10	UP—71536	24,670 lbs.	17 88
Livermore	San Francisco	725—2/24/11	SP—84282	23,660 lbs.	16 56
Livermore	San Francisco	763—2/27/11	OW—10029	24,590 lbs.	17 21
Livermore	San Francisco	902—3/11/11	UP—68939	17,380 lbs.	12 17
Livermore	San Francisco	141—1/12/11	SP—80751	21,060 lbs.	14 74
Livermore	San Francisco	261—1/20/11	LW—32420	24,810 lbs.	17 37
Livermore	San Francisco	9—1/3/11	UP—73065	17,000 lbs.	11 90
				1,586,630 lbs.	$1111 13
Should be 1,586,630 lbs. at $1.15					912 31
Overcharge					$198 82
Total overcharge					$457 05

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STATEMENT 1.

Statement of Overcharges in Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Altamont	San Francisco	468—10/8/11	SP—38485	15,000 lbs.	$10 88
Altamont	San Francisco	467—10/7/11	SP—80598	20,870 lbs.	15 13
Altamont	San Francisco	397—6/21/11	ORN—11085	24,850 lbs.	18 62
Altamont	San Francisco	393—6/16/11	SP—69529	19,000 lbs.	13 78
Altamont	San Francisco	391—6/16/11	SP—21379	32,830 lbs.	23 80
Altamont	San Francisco	363—5/30/11	OSL—10392	27,970 lbs.	20 28
Altamont	San Francisco	362—5/30/11	OC—88422	24,120 lbs.	17 49
Altamont	San Francisco	360—5/29/11	UP—71500	23,750 lbs.	17 22
Altamont	San Francisco	526—12/31/10	SP—89317	28,300 lbs.	20 52
Altamont	San Francisco	18—1/21/11	UP—71212	27,900 lbs.	20 22
Altamont	San Francisco	524—12/31/10	UP—68151	17,000 lbs.	12 33
Altamont	San Francisco	79—1/21/11	SP—17184	27,400 lbs.	19 86
Altamont	San Francisco	525—12/31/10	TNO—10787	19,400 lbs.	14 07
Altamont	San Francisco	10—1/11/11	UP—71606	26,440 lbs.	19 20
Altamont	San Francisco	13—1/11/11	UP—73183	25,110 lbs.	18 20
Altamont	San Francisco	11—1/11/11	GH—33890	26,140 lbs.	18 95
Altamont	San Francisco	12—1/11/11	SP—89579	26,130 lbs.	18 95
Altamont	San Francisco	5—1/11/11	UP—67593	18,140 lbs.	13 15
Altamont	San Francisco	8—1/11/11	UP—65780	17,800 lbs.	12 90
Altamont	San Francisco	7—1/11/11	UP—65104	17,300 lbs.	12 54
Altamont	San Francisco	473—10/13/11	LW—33006	23,090 lbs.	16 74
Cayley	San Francisco	6—8/25/11	ORN—11729	22,310 lbs.	16 17
Midway	San Francisco	431—12/19/10	SP—73943	19,000 lbs.	13 78
Midway	San Francisco	430—12/19/10	SP—66712	19,000 lbs.	13 78
Midway	San Francisco	436—12/22/10	SP—65751	19,000 lbs.	13 78
Midway	San Francisco	435—12/22/10	UP—65297	17,000 lbs.	12 33
Midway	San Francisco	432—12/19/10	SP—38856	18,140 lbs.	13 15
Midway	San Francisco	433—12/19/10	LW—30826	20,000 lbs.	14 50
Midway	San Francisco	434—12/20/10	ORN—8073	25,610 lbs.	18 57
Midway	Oakland	110—11/10/11	SP—73837	19,470 lbs.	14 12
Midway	Oakland	113—11/13/11	SP—32881	19,000 lbs.	13 78
Altamont	San Francisco	506—11/10/11	SP—72471	19,000 lbs.	13 78
Altamont	San Francisco	494—11/4/11	UP—50225	34,970 lbs.	25 35
Altamont	San Francisco	477—10/18/11	LW—32308	20,780 lbs.	15 07
Altamont	San Francisco	501—11/1/11	MLT—32807	21,930 lbs.	15 90
Midway	San Francisco	108—5/9/11	UP—73466	28,820 lbs.	20 89
Midway	San Francisco	106—5/8/11	UP—67959	17,000 lbs.	12 33
Midway	San Francisco	105—5/8/11	SP—66089	19,000 lbs.	13 78
Midway	San Francisco	104—5/8/11	LW—12821	19,000 lbs.	13 78
Midway	San Francisco	101—5/6/11	UP—71266	22,790 lbs.	16 52
Midway	San Francisco	100—5/6/11	UP—70718	22,370 lbs.	16 22
Midway	San Francisco	99—5/6/11	SP—85125	22,820 lbs.	16 54
Midway	San Francisco	98—5/5/11	ORN—10775	21,850 lbs.	15 84
Midway	San Francisco	97—5/5/11	MLT—33503	22,750 lbs.	16 49
Midway	San Francisco	96—5/4/11	SP—85498	25,760 lbs.	18 68
Midway	San Francisco	95—5/4/11	SP—89350	22,720 lbs.	16 47
Midway	San Francisco	94—5/4/11	UP—73236	21,900 lbs.	15 87
Midway	San Francisco	91—5/4/11	SP—20874	25,970 lbs.	18 83
Midway	San Francisco	74—5/2/11	MLT—33570	27,990 lbs.	20 29
Midway	San Francisco	47—3/17/11	SP—80160	21,620 lbs.	15 67
Ellis	San Francisco	3—6/1/11	GH—10341	19,560 lbs.	14 18
Ellis	San Francisco	6—6/5/11	TNO—30996	21,290 lbs.	15 43
Ellis	San Francisco	1—6/31/11	LW—33832	27,690 lbs.	20 08
Ellis	Oakland	5—6/5/11	UP—65622	17,800 lbs.	12 91
Ellis	Oakland	1—6/1/11	LW—10545	19,000 lbs.	13 78
Ellis	Oakland	2—6/1/11	SP—16808	33,010 lbs.	23 93
Midway	Oakland	109—5/10/11	TNO—31050	20,620 lbs.	14 95
Midway	Oakland	102—5/10/11	GH—31734	20,000 lbs.	14 50

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STATEMENT 1—Continued.

Statement of Overcharges In Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Midway ------	Oakland ------	93—5/6/11	LW—12195	19,000 lbs.	$13 78
Midway ------	Oakland ------	90—5/6/11	SP—65836	19,000 lbs.	13 78
Midway ------	Oakland ------	77—5/4/11	LW—32528	21,620 lbs.	15 67
Midway ------	Oakland ------	75—5/4/11	MLT—30185	20,000 lbs.	14 50
Midway ------	Oakland ------	72—5/4/11	GH—31752	20,860 lbs.	15 12
Midway ------	Oakland ------	48—3/21/11	SP—72503	19,000 lbs.	13 78
Altamont ----	San Francisco	266—5/10/11	OW—10428	25,550 lbs.	18 52
Altamont ----	San Francisco	256—5/8/11	UP—72546	25,260 lbs.	18 31
Altamont ----	San Francisco	249—5/5/11	UP—56420	17,000 lbs.	12 32
Altamont ----	San Francisco	299—5/16/11	SP—70198	19,000 lbs.	13 78
Altamont ----	San Francisco	289—5/15/11	UP—67192	17,240 lbs.	12 50
Altamont ----	San Francisco	283—5/13/11	SP—87222	25,500 lbs.	18 48
Altamont ----	San Francisco	276—5/13/11	SP—83595	20,460 lbs.	14 83
Altamont ----	San Francisco	269—5/11/11	HTC—11354	26,210 lbs.	19 00
Altamont ----	San Francisco	311—5/18/11	ORN—12230	24,730 lbs.	17 93
Altamont ----	San Francisco	310—5/18/11	SP—81824	20,000 lbs.	14 50
Altamont ----	San Francisco	326—5/20/11	HEWT— 672	19,000 lbs.	13 78
Altamont ----	San Francisco	388—6/13/11	SP—65082	19,000 lbs.	13 78
Altamont ----	San Francisco	184—4/7/11	TNO—10722	19,830 lbs.	14 38
Altamont ----	San Francisco	168—4/1/11	ORN—10701	26,210 lbs.	19 00
Altamont ----	San Francisco	179—4/6/11	TNO—12314	19,656 lbs.	14 25
Altamont ----	San Francisco	192—4/10/11	MLT—30175	20,240 lbs.	14 67
Altamont ----	San Francisco	188—4/8/11	SP—85866	26,490 lbs.	19 20
Altamont ----	San Francisco	176—4/5/11	SP—86468	26,130 lbs.	18 94
Altamont ----	San Francisco	53—2/9/11	UP—67471	18,660 lbs.	13 53
Altamont ----	Oakland ------	135—3/21/11	UP—67171	17,150 lbs.	12 43
Altamont ----	San Francisco	58—2/10/11	UP—67047	18,900 lbs.	13 70
Altamont ----	San Francisco	34—2/4/11	UP—68531	19,800 lbs.	14 36
Altamont ----	San Francisco	116—3/24/11	UP—68864	17,550 lbs.	12 72
Altamont ----	San Francisco	133—3/21/11	UP—68619	17,430 lbs.	12 64
Altamont ----	San Francisco	42—2/7/11	UP—68571	19,560 lbs.	14 18
Altamont ----	San Francisco	47—2/8/11	SP—69101	19,490 lbs.	14 13
Altamont ----	San Francisco	31—2/2/11	SP—70793	19,860 lbs.	14 40
Altamont ----	San Francisco	29—2/1/11	SP—73978	19,400 lbs.	14 07
Altamont ----	San Francisco	113—3/23/11	UP—66160	18,680 lbs.	13 54
Altamont ----	San Francisco	186—4/8/11	SP—83527	20,650 lbs.	14 97
Altamont ----	San Francisco	41—2/7/11	SP—82808	22,300 lbs.	16 17
Altamont ----	San Francisco	167—4/1/11	SP—82043	21,900 lbs.	15 88
Altamont ----	San Francisco	219—4/18/11	MLT—33633	25,000 lbs.	18 13
Altamont ----	San Francisco	158—3/28/11	SP—64541	19,000 lbs.	13 78
Altamont ----	San Francisco	215—4/17/11	UP—65205	18,730 lbs.	13 58
Altamont ----	San Francisco	52—2/9/11	SP—65855	20,330 lbs.	14 74
Altamont ----	San Francisco	145—3/24/11	UP—65456	17,420 lbs.	12 63
Altamont ----	San Francisco	212—4/15/11	SP—65026	19,660 lbs.	14 25
Altamont ----	San Francisco	182—4/7/11	SP—33382	25,680 lbs.	18 63
Midway ------	San Francisco	107—5/9/11	UP—72621	29,101 lbs.	21 03
Altamont ----	San Francisco	6—1/10/11	SP—64195	19,000 lbs.	13 78
Altamont ----	Oakland ------	313—3/20/11	UP—73631	33,000 lbs.	23 10
Altamont ----	Oakland ------	499—11/3/11	ORN—11222	28,210 lbs.	20 45
Altamont ----	Oakland ------	495—11/1/11	UP—68926	29,520 lbs.	21 40
Altamont ----	Oakland ------	492—10/28/11	UP—71776	31,330 lbs.	22 71
Altamont ----	Oakland ------	488—10/25/11	GH—10422	19,000 lbs.	13 78
Altamont ----	Oakland ------	480—10/19/11	SP—33359	28,610 lbs.	20 74
Altamont ----	Oakland ------	479—10/19/11	MLT—32176	23,650 lbs.	17 15
Altamont ----	Oakland ------	475—10/14/11	SP—38612	17,880 lbs.	12 96
Altamont ----	Oakland ------	471—10/13/11	SP—38906	18,180 lbs.	13 18
Altamont ----	Oakland ------	92—5/6/11	GH—11869	19,000 lbs.	13 78
Altamont ----	Oakland ------	496—12/10/10	SP—80058	21,810 lbs.	15 81

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STATEMENT 1—Continued.

Statement of Overcharges In Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Altamont	Oakland	466—12 7 10	OSL—8060	25,890 lbs.	$18 77
Altamont	Oakland	473—12 9 10	SP—68138	19,330 lbs.	14 01
Altamont	San Francisco	470—10 11	SP—81119	26,260 lbs.	19 04
Altamont	San Francisco	469—10 8 11	SP—33370	25,620 lbs.	18 57
Altamont	San Francisco	466—10 7 11	SP—32934	27,230 lbs.	19 74
Altamont	San Francisco	464—10 5 11	UP—65004	17,950 lbs.	13 01
Altamont	San Francisco	463—10 4 11	SP—83977	26,200 lbs.	18 99
Altamont	San Francisco	331—5 22 11	SP—21138	32,500 lbs.	23 56
Altamont	San Francisco	329—5 20 11	LW—32908	26,800 lbs.	19 43
Altamont	San Francisco	324—5 20 11	SP—69251	19,800 lbs.	14 36
Altamont	San Francisco	323—5 20 11	TNO—12307	19,400 lbs.	14 07
Altamont	San Francisco	319—5 19 11	UP—72642	26,800 lbs.	19 43
Altamont	San Francisco	318—5 19 11	UP—65614	18,300 lbs.	13 27
Altamont	San Francisco	317—5 19 11	ORN—10942	26,900 lbs.	19 50
Altamont	San Francisco	316—5 19 11	ORN—10723	27,400 lbs.	19 87
Altamont	San Francisco	306—5 17 11	HTC—11308	28,200 lbs.	20 45
Altamont	San Francisco	305—5 17 11	UP—67254	18,200 lbs.	13 20
Altamont	San Francisco	296—5 16 11	HTC—11682	27,210 lbs.	19 73
Altamont	San Francisco	295—5 16 11	SP—69369	19,980 lbs.	14 49
Altamont	San Francisco	294—5 16 11	SP—65107	19,010 lbs.	13 78
Altamont	San Francisco	264—5 9 11	SP—80131	21,400 lbs.	15 52
Altamont	San Francisco	263—5 9 11	OSL—8008	24,000 lbs.	17 40
Altamont	San Francisco	262—5 9 11	SP—70776	19,100 lbs.	13 85
Altamont	San Francisco	261—5 9 11	TNO—11611	19,000 lbs.	13 78
Altamont	San Francisco	260—5 9 11	ORN—10179	27,300 lbs.	19 79
Altamont	San Francisco	462—9 30 11	ORN—11530	26,100 lbs.	18 92
Altamont	San Francisco	459—9 27 11	SP—86508	26,370 lbs.	19 12
Altamont	San Francisco	455—9 22 11	SP—80777	20,110 lbs.	14 58
Altamont	San Francisco	431—7 31 11	I&V—32847	26,710 lbs.	19 36
Altamont	San Francisco	430—7 29 11	SP—80122	22,770 lbs.	16 51
Altamont	San Francisco	429—7 25 11	ORN—11912	21,970 lbs.	15 93
Altamont	San Francisco	404—6 27 11	HTC—11892	30,570 lbs.	22 16
Altamont	San Francisco	402—6 23 11	TNO—12939	25,650 lbs.	18 60
Altamont	San Francisco	398—6 21 11	SP—16940	27,590 lbs.	20 00
Altamont	San Francisco	347—5 25 11	UP—67128	17,000 lbs.	12 33
Altamont	San Francisco	312—5 18 11	SP—85411	25,880 lbs.	18 76
Altamont	San Francisco	302—5 17 11	GH—11219	19,910 lbs.	14 43
Altamont	San Francisco	300—5 16 11	SP—87374	24,760 lbs.	17 95
Altamont	San Francisco	287—5 15 11	UP—71283	28,330 lbs.	19 83
Altamont	San Francisco	282—5 13 11	UP—65319	17,150 lbs.	12 65
Altamont	San Francisco	281—5 12 11	SP—81480	23,670 lbs.	17 16
Altamont	San Francisco	273—5 7 11	TNO—11623	19,000 lbs.	13 78
Altamont	San Francisco	272—5 11 11	LW—32320	21,070 lbs.	15 28
Altamont	San Francisco	259—5 9 11	UP—72667	21,920 lbs.	15 89
Altamont	San Francisco	254—5 6 11	SP—83297	20,900 lbs.	15 15
Altamont	San Francisco	253—5 6 11	SP—83586	20,860 lbs.	15 08
Altamont	San Francisco	251—5 5 11	HTC—11238	23,780 lbs.	17 24
Altamont	San Francisco	245—5 3 11	SP—86505	25,370 lbs.	18 39
Altamont	San Francisco	239—4 27 11	UP—65887	18,230 lbs.	13 22
Altamont	San Francisco	238—4 27 11	SP—70630	19,240 lbs.	13 95
Altamont	San Francisco	228—4 21 11	UP—65171	17,000 lbs.	12 33
Altamont	San Francisco	227—4 21 11	UP—65445	18,150 lbs.	13 16
Altamont	San Francisco	218—4 18 11	SP—82261	20,900 lbs.	15 15
Altamont	San Francisco	213—4 15 11	UP—70347	24,850 lbs.	18 02
Altamont	San Francisco	208—4 13 11	GH—33993	24,380 lbs.	17 68
Altamont	San Francisco	178—4 6 11	SP—88887	24,280 lbs.	17 60
Altamont	San Francisco	175—4 4 11	SP—70008	19,000 lbs.	13 79
Altamont	San Francisco	174—4 4 11	TNO—10927	19,000 lbs.	13 78

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STATEMENT 1—Continued.

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From.	To.	Waybill.	Car.	Weight.	Charges.
Altamont	San Francisco	150—3/25/11	MLT—30510	20,210 lbs.	$11 65
Altamont	San Francisco	147—3/24/11	SP—82082	23,800 lbs.	17 26
Altamont	San Francisco	142—3/23/11	SP—38349	17,100 lbs.	12 62
Altamont	San Francisco	141—3/23/11	UP—72841	27,700 lbs.	20 08
Altamont	San Francisco	140—3/23/11	OSL— 9384	26,850 lbs.	19 47
Altamont	San Francisco	127—3/17/11	ORN—10855	29,000 lbs.	20 03
Altamont	San Francisco	126—3/17/11	ORN—10331	29,800 lbs.	21 61
Altamont	San Francisco	124—3/17/11	SP—21622	32,300 lbs.	23 42
Altamont	San Francisco	123—3/17/11	SP—81477	22,200 lbs.	16 10
Ellis	San Francisco	11—7/17/11	SP—86733	25,770 lbs.	18 68
Ellis	San Francisco	640—7/20/11	LW—12173	19,000 lbs.	13 78
Ellis	San Francisco	639—7/20/11	SP—81614	21,290 lbs.	15 44
Ellis	San Francisco	10—7/15/11	UP—73367	26,150 lbs.	18 96
Ellis	San Francisco	8—7/14/11	UP—72376	22,640 lbs.	16 41
Ellis	San Francisco	9—7/15/11	SP—21009	26,490 lbs.	19 20
Ellis	San Francisco	18—9/11/11	GH—34225	27,260 lbs.	19 76
Ellis	San Francisco	19—9/11/11	UP—72463	26,800 lbs.	19 43
Cayley	San Francisco	5—8/19/11	SP—86180	24,160 lbs.	17 52
Cayley	San Francisco	4—8/15/11	SP—87162	25,290 lbs.	18 33
Cayley	San Francisco	3—8/14/11	SP—80665	22,510 lbs.	16 32
				4,386,627 lbs.	$3177 84
Should be 4,386,627 lbs. at $1.15					2522 31
Overcharge					$655 53

Livermore	San Francisco	2106—6/13/11	SP—17593	25,800 lbs.	$18 06
Livermore	San Francisco	2207—6/23/11	OSL— 9066	26,320 lbs.	18 42
Livermore	San Francisco	2206—6/23/11	TNO—31082	20,880 lbs.	14 60
Livermore	San Francisco	2161—6/19/11	UP—72470	27,300 lbs.	19 11
Livermore	San Francisco	2143—6/17/11	UP—66734	18,300 lbs.	12 81
Livermore	San Francisco	3572—11/6/11	UP—55089	17,000 lbs.	11 90
Livermore	San Francisco	3689—11/7/11	SP—77579	19,000 lbs.	13 30
Livermore	San Francisco	778—2/27/11	I&V—32846	26,760 lbs.	18 73
Livermore	San Francisco	667—2/20/11	SP—70187	19,000 lbs.	13 30
Livermore	San Francisco	656—2/18/11	GH—31652	20,120 lbs.	14 08
Livermore	San Francisco	640—2/17/11	O&C—68607	19,000 lbs.	13 30
Livermore	San Francisco	629—6/16/11	UP—67356	17,210 lbs.	12 07
Livermore	San Francisco	613—2/15/11	ORN— 7082	17,710 lbs.	12 40
Livermore	San Francisco	596—2/14/11	SP— 66171	19,000 lbs.	13 30
Livermore	San Francisco	579—2/13/11	SP—81767	22,890 lbs.	16 02
Livermore	San Francisco	566—2/11/11	LW—10601	19,490 lbs.	13 64
Livermore	San Francisco	512—2/10/11	SP—38353	16,930 lbs.	11 85
Livermore	San Francisco	526—2/9/11	SP—69857	19,180 lbs.	13 43
Livermore	San Francisco	495—2/8/11	UP— 70890	25,370 lbs.	17 75
Livermore	San Francisco	2249—6/28/11	UP—68531	17,000 lbs.	11 90
Livermore	San Francisco	2272—6/30/11	MLT—30161	21,050 lbs.	14 74
Livermore	San Francisco	2218—6/28/11	SP— 80745	20,680 lbs.	14 48
Livermore	San Francisco	2331—7/8/11	LW— 30825	17,280 lbs.	12 10
Livermore	San Francisco	2333—7/8/11	SP— 82704	20,000 lbs.	14 00
Livermore	San Francisco	2938—9/6/11	MLT—30192	20,000 lbs.	14 00
Livermore	San Francisco	3141—9/28/11	SP 38299	15,400 lbs.	10 78
Livermore	San Francisco	2988—9/12/11	HTC— 6213	19,180 lbs.	13 43
Livermore	San Francisco	2910—9/2/11	GH—31783	20,000 lbs.	14 00
Livermore	San Francisco	2165—9/30/11	ORN—12724	26,950 lbs.	18 87
Livermore	San Francisco	3164—9/30/11	ORN—11822	26,630 lbs.	18 66

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STATEMENT 1—Continued.

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From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	San Francisco	3131—9 28 11	SP—38807	15,210 lbs.	$10 65
Livermore	San Francisco	1597—5 2 11	SP—86266	26,650 lbs.	18 66
Livermore	San Francisco	1665—5 7 11	SP—85614	27,950 lbs.	19 57
Livermore	San Francisco	1617—5 4 11	SP—86210	26,700 lbs.	18 69
Livermore	San Francisco	1647—5 6 11	UP—73558	28,160 lbs.	19 71
Livermore	San Francisco	1635—5 5 11	UP—72930	22,400 lbs.	15 68
Livermore	San Francisco	1634—5 5 11	SP—69252	19,200 lbs.	13 44
Livermore	San Francisco	1596—5 2 11	MLT—33195	26,870 lbs.	18 80
Livermore	San Francisco	1648—5 6 11	TNO—31358	25,650 lbs.	17 96
Livermore	San Francisco	1666—5 7 11	SP—20503	28,070 lbs.	19 65
Livermore	San Francisco	1636—5 5 11	ORN—11848	20,000 lbs.	14 00
Livermore	San Francisco	1477—4 21 11	MLT—30736	20,000 lbs.	14 00
Livermore	San Francisco	1466—4 20 11	HTC—11350	23,570 lbs.	16 50
Livermore	San Francisco	1446—4 19 11	MLT—32111	21,520 lbs.	15 06
Livermore	San Francisco	1430—4 18 11	UP—70936	24,260 lbs.	16 98
Livermore	San Francisco	1419—4 16 11	SP—66281	19,000 lbs.	13 30
Livermore	San Francisco	1410—4 15 11	MLT—32020	23,980 lbs.	16 79
Livermore	San Francisco	1409—4 15 11	LW—12839	19,160 lbs.	13 41
Livermore	San Francisco	1408—4 15 11	SP—22937	27,030 lbs.	18 92
Livermore	San Francisco	1405—4 15 11	SP—61045	19,000 lbs.	13 30
Livermore	San Francisco	1380—4 14 11	SP—89169	26,340 lbs.	18 44
Livermore	San Francisco	1379—4 14 11	TNO—12998	27,130 lbs.	18 99
Livermore	San Francisco	1377—4 14 11	GH—10146	19,000 lbs.	13 30
Livermore	San Francisco	1361—4 13 11	SP—83615	21,900 lbs.	15 33
Livermore	San Francisco	1360—4 13 11	SP—80761	21,970 lbs.	15 38
Livermore	San Francisco	1359—4 13 11	UP—68104	18,610 lbs.	13 03
Livermore	San Francisco	1357—4 13 11	UP—67416	17,000 lbs.	11 90
Livermore	San Francisco	1341—4 12 11	GH—11244	19,000 lbs.	13 30
Livermore	San Francisco	1340—4 12 11	SP—83590	21,710 lbs.	15 20
Livermore	San Francisco	1339—4 12 11	SP—83140	21,060 lbs.	14 74
Livermore	San Francisco	1338—4 12 11	HEWT—880	23,430 lbs.	16 40
Livermore	San Francisco	1320—4 11 11	SP—69048	19,000 lbs.	13 30
Livermore	San Francisco	1288—4 8 11	UP—65455	17,000 lbs.	11 90
Livermore	San Francisco	1226—4 5 11	ORN—11250	25,260 lbs.	17 68
Livermore	San Francisco	1225—4 5 11	UP—68799	17,370 lbs.	12 16
Livermore	San Francisco	1195—4 2 11	UP—65178	17,101 lbs.	11 90
Livermore	San Francisco	423—3 14 11	GH—12153	19,000 lbs.	13 30
Livermore	San Francisco	1168—3 30 11	MLT—30211	20,000 lbs.	14 00
Livermore	San Francisco	1092—3 25 11	UP—67168	17,460 lbs.	12 22
Livermore	San Francisco	1091—3 25 11	UP—68587	18,310 lbs.	12 82
Livermore	San Francisco	192—1 17 11	SP—80338	20,000 lbs.	14 00
Livermore	San Francisco	120—1 11 11	SP—80331	20,000 lbs.	14 00
Livermore	San Francisco	96—1 9 11	SP—80248	21,480 lbs.	15 04
Livermore	San Francisco	260—1 20 11	SP—80129	20,120 lbs.	14 08
Livermore	San Francisco	197—1 17 11	HTC—7237	19,000 lbs.	13 30
Livermore	San Francisco	2797—8 9 11	UP—72167	25,100 lbs.	17 57
Livermore	San Francisco	2893—8 31 11	SP—84193	20,380 lbs.	14 27
Livermore	San Francisco	2839—8 25 11	UP—74120	26,800 lbs.	18 76
Livermore	San Francisco	2810—8 27 11	OW—13138	25,900 lbs.	18 13
Livermore	San Francisco	2786—8 18 11	HTC—7277	19,200 lbs.	13 44
Livermore	San Francisco	2822—8 23 11	UP—1967	28,300 lbs.	19 81
Livermore	San Francisco	2824—8 23 11	SP—89034	21,730 lbs.	15 21
Livermore	San Francisco	2949—8 26 11	SP—66304	20,240 lbs.	14 17
Livermore	San Francisco	2897—8 18 11	UP—70722	22,530 lbs.	15 77
Livermore	San Francisco	2894—8 19 11	LW—12187	19,000 lbs.	13 30
Livermore	San Francisco	2715—8 10 11	SP—84919	25,610 lbs.	17 93
Livermore	San Francisco	2725—8 11 11	SP—70347	19,900 lbs.	13 93
Livermore	San Francisco	2745—8 14 11	SP—21578	27,020 lbs.	18 91

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Livermore	San Francisco	2686—8/8/11	UP—68358	17,230 lbs.	$12 06
Livermore	San Francisco	2652—8/5/11	UP—66386	17,940 lbs.	12 56
				1,930,860 lbs.	$1351 63
Should be 1,930,860 lbs. at $1.15					1110 24
Overcharge					$241 39
Midway	San Francisco	78—8/14/11	SP—82085	75,200 lbs.	$58 28
Should be 75,200 lbs. at $1.15					43 24
Overcharge					$15 04
Midway	West Berkeley	35—6/9/11	UP—70954	25,280 lbs.	$20 83
Midway	Stockyards	45—6/12/11	SP—64492	20,250 lbs.	17 18
				45,430 lbs.	38 01
Should be 45,530 lbs. +$2.50 at $1.15					31 18
Overcharge					$6 83
Sunol	San Francisco	712—10/21/11	GH—10222	22,240 lbs.	$13 34
Sunol	San Francisco	538—8/19/11	GH—10113	51,500 lbs.	30 90
Sunol	San Francisco	516—8/15/11	SP—70341	21,000 lbs.	12 60
Sunol	San Francisco	660—9/25/11	HTC—11997	39,030 lbs.	23 45
Sunol	San Francisco	657—9/23/11	MLT—33134	30,930 lbs.	18 56
Sunol	San Francisco	662—9/26/11	SP—60159	23,330 lbs.	14 00
Sunol	San Francisco	652—9/22/11	SP—20911	37,330 lbs.	22 40
Sunol	San Francisco	646—9/19/11	UP—66365	21,810 lbs.	13 09
Sunol	San Francisco	644—9/18/11	UP—89369	27,960 lbs.	16 78
Sunol	San Francisco	609—9/6/11	SP—81701	20,000 lbs.	12 00
Sunol	San Francisco	546—8/22/11	SP—83244	21,700 lbs.	13 02
Sunol	San Francisco	492—8/10/11	OW— 8130	26,600 lbs.	15 96
Sunol	San Francisco	486—8/9/11	SP—70630	20,400 lbs.	12 24
Sunol	San Francisco	524—8/17/11	SP—89054	27,800 lbs.	16 68
Sunol	San Francisco	532—8/18/11	MLT—11446	20,100 lbs.	12 06
Sunol	San Francisco	500—8/12/11	SP—84286	23,400 lbs.	14 04
Sunol	San Francisco	509—8/14/11	UP—68534	18,800 lbs.	11 28
Sunol	San Francisco	520—8/16/11	UP—68939	18,280 lbs.	10 97
Livermore	San Leandro	647—2/17/11	UP—71237	27,750 lbs.	16 65
Pleasanton	Oakland	2231—11/6/11	SP—83060	22,930 lbs.	13 76
Pleasanton	Oakland	2209—11/3/11	GH—14750	26,990 lbs.	16 19
Pleasanton	Oakland	2190—11/2/11	CP—76737	21,060 lbs.	12 64
Pleasanton	Oakland	2179—11/1/11	MLT—14331	27,510 lbs.	16 51
Pleasanton	Oakland	2158—10/31/11	IC—39506	24,670 lbs.	14 80
Pleasanton	Oakland	2156—10/31/11	SP—73940	20,780 lbs.	12 47
Pleasanton	Oakland	2145—10/31/11	SP—77571	20,830 lbs.	12 50
Pleasanton	Oakland	2100—10/21/11	LW—14074	28,670 lbs.	17 20
Pleasanton	Oakland	2089—10/23/11	ORN—13128	29,030 lbs.	17 42
Pleasanton	Oakland	2049—10/20/11	GH—10150	23,300 lbs.	13 98

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Pleasanton	Oakland	2080—10 19 11	HTC—11674	27,720 lbs.	$16 63
Pleasanton	Oakland	2020—10 18 11	SP—89369	29,900 lbs.	17 94
Pleasanton	Oakland	2005—10 17 11	MLT—11403	20,050 lbs.	12 03
				823,160 lbs.	$494 09
Should be 823,460 lbs. at $1.15					473 49
Overcharge					$20 60
Pleasanton	San Francisco	1250—9 8 11	OC—88524	24,900 lbs.	$16 81
Pleasanton	San Francisco	1577—9 11 11	SP—76566	20,000 lbs.	13 50
Pleasanton	San Francisco	1597—9 13 11	SP—76572	20,000 lbs.	13 50
Pleasanton	San Francisco	1599—9 13 11	SP—81350	23,300 lbs.	15 73
Pleasanton	San Francisco	1598—9 13 11	SP—77600	20,000 lbs.	13 50
Pleasanton	San Francisco	1653—9 6 11	UP—62176	23,500 lbs.	15 86
Pleasanton	San Francisco	1635—9 15 11	CP—84748	25,400 lbs.	17 15
Pleasanton	San Francisco	1600—9 13 11	MLT—12454	19,000 lbs.	12 83
Pleasanton	San Francisco	1651—9 16 11	SP—70965	19,000 lbs.	11 83
Pleasanton	San Francisco	1676—9 19 11	SP—86137	20,000 lbs.	13 50
Pleasanton	San Francisco	1863—10 5 11	SP—88970	20,000 lbs.	13 50
Pleasanton	San Francisco	1218—7 27 11	LW—12206	19,000 lbs.	12 83
Pleasanton	San Francisco	1216—7 21 11	TNO—12361	19,460 lbs.	13 14
Pleasanton	San Francisco	1184—7 15 11	SP—86486	26,320 lbs.	17 76
Pleasanton	San Francisco	1165—7 12 11	GH—33869	25,030 lbs.	16 90
Pleasanton	San Francisco	55—3 23 11	GH—33965	26,170 lbs.	17 87
Pleasanton	San Francisco	562—3 24 11	UP—68137	17,000 lbs.	11 48
Pleasanton	San Francisco	3916—12 30 10	SP—80733	20,460 lbs.	13 81
Pleasanton	San Francisco	3874—12 26 10	UP—67704	17,000 lbs.	11 48
Pleasanton	San Francisco	3873—12 24 10	MLT—33343	26,050 lbs.	17 58
Pleasanton	San Francisco	3872—12 24 10	SP—72504	19,000 lbs.	12 83
Pleasanton	San Francisco	3867—12 23 10	GH—31575	23,710 lbs.	16 00
Pleasanton	San Francisco	1473—8 30 11	SP—83289	21,370 lbs.	14 42
Pleasanton	San Francisco	1467—8 29 11	ORN— 7077	18,000 lbs.	12 15
Pleasanton	San Francisco	1466—8 29 11	SP—69262	20,700 lbs.	13 97
Pleasanton	San Francisco	1465—8 29 11	GH—10276	20,130 lbs.	13 59
Pleasanton	San Francisco	1461—8 29 11	SP—89573	26,100 lbs.	17 62
Pleasanton	San Francisco	1464—8 29 11	SP—21164	35,780 lbs.	24 15
Pleasanton	San Francisco	1439—8 26 11	SP—86755	25,580 lbs.	17 26
Pleasanton	San Francisco	1438—8 26 11	UP—68148	18,500 lbs.	12 49
Pleasanton	San Francisco	1436—8 26 11	SP—80100	20,700 lbs.	13 97
Pleasanton	San Francisco	1426—8 25 11	LW— 9725	19,000 lbs.	12 83
Pleasanton	San Francisco	1425—8 25 11	OSL—10036	27,000 lbs.	18 23
Pleasanton	San Francisco	1408—8 22 11	UP—68148	17,650 lbs.	11 91
Pleasanton	San Francisco	1406—8 22 11	UP—69670	17,450 lbs.	11 78
Pleasanton	San Francisco	1405—8 22 11	UP—68429	18,000 lbs.	12 15
Pleasanton	San Francisco	1401—8 22 11	OW—10065	23,720 lbs.	16 01
Pleasanton	San Francisco	1395—8 25 11	OW—11030	25,480 lbs.	17 20
Pleasanton	San Francisco	1393—8 25 11	LW—30778	21,360 lbs.	14 42
Pleasanton	San Francisco	1355—8 15 11	TNO—31401	23,460 lbs.	15 83
Pleasanton	San Francisco	1292—8 3 11	GH—10377	19,480 lbs.	13 15
Pleasanton	San Francisco	1291—8 3 11	ORN—10401	26,070 lbs.	17 60
Pleasanton	San Francisco	1289—8 3 11	UP—70327	26,310 lbs.	17 76
Pleasanton	San Francisco	1278—8 1 11	UP—72008	25,660 lbs.	17 32
Pleasanton	San Francisco	2119—10 27 11	UP—66198	18,228 lbs.	12 30
Pleasanton	San Francisco	2113—10 25 11	SP—33356	19,000 lbs.	12 83
Pleasanton	San Francisco	2102—10 24 11	SP—75866	19,000 lbs.	12 83

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STATEMENT 1—Continued.

Statement of Overcharges In Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Pleasanton	San Francisco	1999—10/17/11	UP—60915	19,000 lbs.	$12 83
Pleasanton	San Francisco	1983—10/16/11	SP—89514	27,000 lbs.	18 35
Pleasanton	San Francisco	1982—10/16/11	SP—38465	17,230 lbs.	11 63
Pleasanton	San Francisco	1973—10/13/11	MLT—30692	22,680 lbs.	15 31
Pleasanton	San Francisco	1972—10/13/11	SP—80034	22,610 lbs.	15 26
Pleasanton	San Francisco	1969—10/12/11	LN—14040	25,700 lbs.	17 35
Pleasanton	San Francisco	1941—10/11/11	OSL—13400	26,070 lbs.	17 60
Pleasanton	San Francisco	1937—10/10/11	OSL— 8177	21,480 lbs.	14 50
Pleasanton	San Francisco	1936—10/10/11	UP—73137	20,000 lbs.	13 50
Pleasanton	San Francisco	1926—10/9/11	SP—69729	19,970 lbs.	13 48
Pleasanton	San Francisco	1900—10/9/11	SP—32938	24,140 lbs.	16 29
Pleasanton	San Francisco	1899—10/9/11	SP—38890	17,320 lbs.	11 69
				1,291,718 lbs.	$870 95
Should be 1,291,718 lbs. at $1.15					742 74
Overcharge					$128 21

Livermore	Oakland	2142—6/17/11	GH—34779	26,630 lbs.	$17 98
Pleasanton	San Francisco	2177—11/1/11	SP—33116	21,070 lbs.	14 22
Pleasanton	San Francisco	2112—10/26/11	SP—80398	22,680 lbs.	15 31
Pleasanton	San Francisco	2144—10/30/11	UP—62327	19,000 lbs.	12 83
Pleasanton	San Francisco	1879—10/6/11	UP—68919	20,000 lbs.	13 50
Pleasanton	San Francisco	2155—10/31/11	OSL— 9369	26,360 lbs.	17 79
Pleasanton	San Francisco	2235—11/6/11	SP—84010	19,000 lbs.	12 83
Pleasanton	San Francisco	2206—11/3/11	OSL—12882	19,000 lbs.	12 83
Pleasanton	San Francisco	2192—11/2/11	SP—66320	19,350 lbs.	13 06
Pleasanton	San Francisco	2208—11/3/11	UP—60922	19,000 lbs.	12 83
Pleasanton	San Francisco	2207—11/3/11	SP—75849	19,300 lbs.	13 03
Pleasanton	San Francisco	2191—11/2/11	SP—70332	19,840 lbs.	13 39
Livermore	Oakland	3632—11/11/11	GH—74739	23,480 lbs.	15 85
Pleasanton	San Francisco	1782—9/28/11	UP—72713	20,000 lbs.	13 50
Pleasanton	San Francisco	1655—9/16/11	OSL—12830	20,000 lbs.	13 50
Pleasanton	San Francisco	1626—9/14/11	MLT—32820	25,250 lbs.	17 04
Pleasanton	San Francisco	1625—9/14/11	SP—85579	26,040 lbs.	17 58
Pleasanton	San Francisco	1624—9/14/11	MLT—35192	25,480 lbs.	17 20
Pleasanton	San Francisco	1613—9/14/11	LW—14082	22,720 lbs.	15 34
Pleasanton	San Francisco	1612—9/14/11	OSL— 9136	25,640 lbs.	17 31
Pleasanton	San Francisco	1611—9/14/11	UP—71364	26,390 lbs.	17 81
Pleasanton	San Francisco	1610—9/14/11	UP—84377	22,730 lbs.	15 34
Pleasanton	San Francisco	1609—9/14/11	MLT—30534	20,680 lbs.	13 96
Pleasanton	San Francisco	1596—9/13/11	MLT—14245	24,610 lbs.	16 61
Pleasanton	San Francisco	1552—9/8/11	UP—65752	18,200 lbs.	12 29
Pleasanton	San Francisco	1551—9/8/11	MLT—32112	23,900 lbs.	16 13
Pleasanton	San Francisco	1549—9/8/11	UP—67361	19,210 lbs.	13 03
Pleasanton	San Francisco	1547—9/8/11	SP—69271	19,670 lbs.	13 28
Pleasanton	San Francisco	1546—9/8/11	GH—31748	23,000 lbs.	15 53
Pleasanton	San Francisco	1545—9/8/11	UP—72695	26,930 lbs.	18 18
Pleasanton	San Francisco	1544—9/8/11	UP—72744	26,600 lbs.	17 96
Pleasanton	San Francisco	1543—9/8/11	UP—61119	20,000 lbs.	13 50
Pleasanton	San Francisco	1542—9/8/11	UP—67370	18,300 lbs.	12 35
Pleasanton	San Francisco	1525—9/6/11	MLT—30657	20,790 lbs.	14 03
Pleasanton	San Francisco	1523—9/6/11	OSL—13951	26,490 lbs.	17 88
Pleasanton	San Francisco	1521—9/6/11	MLT—14569	25,190 lbs.	17 00
Pleasanton	San Francisco	1509—9/5/11	UP—67936	17,530 lbs.	11 83
Pleasanton	San Francisco	1508—9/5/11	TNO—30936	22,500 lbs.	15 19

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STATEMENT 1—Continued.

Statement of Overcharges in Case No. 228.

SCOTT, MAGNER & MILLER.

From.	To.	Waybill.	Car.	Weight.	Charges.
Pleasanton --	San Francisco	1507—9 5 11	UP—70935	27,690 lbs.	$18 69
Pleasanton --	San Francisco	1553—9 8 11	GH—10413	19,400 lbs.	13 10
Pleasanton --	San Francisco	1548—9 8 11	MLT—32090	19,000 lbs.	12 83
Pleasanton --	San Francisco	1531—9 6 11	SP—82395	20,000 lbs.	13 50
Pleasanton --	San Francisco	1530—9 6 11	UP—67537	18,200 lbs.	12 29
Pleasanton --	San Francisco	1529—9 6 11	LW—30798	21,100 lbs.	14 24
Pleasanton --	San Francisco	1528—9 6 11	UP—65551	19,300 lbs.	13 03
Pleasanton --	San Francisco	1527—9 6 11	UP—66367	17,000 lbs.	11 48
Pleasanton --	San Francisco	1526—9 6 11	SP—75625	19,600 lbs.	13 23
Pleasanton --	San Francisco	1489—9 1 11	SP—83685	22,410 lbs.	15 13
Pleasanton --	San Francisco	1488—9 1 11	MLT—30430	20,830 lbs.	14 06
Pleasanton --	San Francisco	1487—9 1 11	OSL— 9579	27,200 lbs.	18 36
Pleasanton --	San Francisco	1486—9 1 11	SP—88719	26,200 lbs.	17 69
Pleasanton --	San Francisco	1484—9 1 11	SP—84837	20,000 lbs.	13 50
Pleasanton --	San Francisco	1483—9 1 11	UP—76068	17,010 lbs.	11 48
Pleasanton --	San Francisco	1482—9 1 11	HTC—12001	32,100 lbs.	21 67
Pleasanton --	San Francisco	1481—9 1 11	MLT—33429	26,440 lbs.	17 85
Pleasanton --	San Francisco	1480 -9 1 11	OSL— 9598	26,660 lbs.	18 00
Pleasanton --	San Francisco	1479—9 1 11	UP—65449	18,760 lbs.	12 66
Pleasanton --	San Francisco	1061—6 21 11	TNO-- 9848	17,000 lbs.	11 48
Pleasanton --	San Francisco	1002—6 10 11	UP—70949	23,020 lbs.	15 54
Pleasanton --	San Francisco	995—6 9 11	SP—82704	20,000 lbs.	13 50
Pleasanton --	San Francisco	975—6 5 11	SP—88661	23,610 lbs.	15 96
Pleasanton --	San Francisco	927—5 27 11	GH—31806	20,350 lbs.	13 74
Pleasanton --	San Francisco	2126—10 18 11	SP—60007	26,970 lbs.	18 20
Pleasanton --	San Francisco	2114—10 25 11	SP—73886	19,000 lbs.	12 83
Pleasanton --	San Francisco	2101—10 24 11	UP—61291	19,620 lbs.	13 24
Pleasanton --	San Francisco	2091—10 23 11	UP—75544	19,690 lbs.	13 29
Pleasanton --	San Francisco	2090—10 23 11	SP—77311	19,160 lbs.	12 93
Pleasanton --	San Francisco	2063—10 21 11	SP—77163	19,000 lbs.	12 83
Pleasanton --	San Francisco	2050—10 20 11	UP—68228	19,800 lbs.	13 37
Pleasanton --	San Francisco	2048—10 20 11	SP—38809	17,510 lbs.	11 84
Pleasanton --	San Francisco	2031—10 19 11	SP—76980	20,670 lbs.	13 95
Pleasanton --	San Francisco	2030—10 19 11	MLT—32677	27,950 lbs.	18 87
Pleasanton --	San Francisco	2029—10 19 11	SP—74403	20,230 lbs.	13 65
Pleasanton --	San Francisco	2022—10 18 11	UP—73256	28,010 lbs.	18 91
Pleasanton --	San Francisco	2021—10 18 11	OC—74434	24,270 lbs.	16 38
Pleasanton --	San Francisco	1988—10 17 11	OSL—13847	24,750 lbs.	16 71
Pleasanton --	San Francisco	1988—10 16 11	UP—62120	26,100 lbs.	17 62
Pleasanton --	San Francisco	1987—10 16 11	SP—77622	19,950 lbs.	13 47
Pleasanton --	San Francisco	1898—10 9 11	SP—33752	22,160 lbs.	15 16
				1,740,340 lbs.	$1175 08
Should be 1,740,340 lbs. at $1.15					1000 70
Overcharge					$174 38
Total overcharge					$1241 98

Recapitulation of overcharges—

L. C. Sheldon	$451 27
Eagan Bros.	457 05
Scott, Magner & Miller	1,241 98
Grand total	$2,150 30

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DECISION No. 101.

GRAYSON-OWEN COMPANY, U. M. SLATER, F. CAMES AND JOSEPH CASALET, DOING BUSINESS UNDER THE NAME AND STYLE OF F. CAMES COMPANY AND F. CAMES AND JOSEPH CASALET, DOING BUSINESS UNDER THE NAME AND STYLE OF CAMES AND CASALET,

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 248.

Decided June 14, 1912.

Held, That on shipments to Stockyards where the carriers have provided facilities for loading and unloading stock, it is manifest that the carriers perform a different and greater service than they undertake to perform where they do not provide such facilities, and that complainant's claims for reparation, based upon the higher charges made under the former circumstances, are not justifiable.

J. O. Bracken, for complainants.

C. W. Durbrow and *George D. Squires*, for defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This case involves a claim for reparation on several carloads of live stock from various points to Stockyards (near Oakland), California, and its adjudication must rest upon correct tariff construction.

At Stockyards the carriers have provided facilities for loading and unloading stock and to that point have named commodity rates for shipments of stock. West Berkeley, which is north of Stockyards, and Emeryville, which is south of Stockyards, have no facilities for loading or unloading stock and no commodity rates on stock are named to those points.

Complainant contends that 80 per cent of class B, which is the rate applied where no commodity rate is given, would make a less rate on shipments from the north through Stockyards to Emeryville and on shipments from the south through Stockyards to West Berkeley than the commodity rate to Stockyards, and that, therefore, the commodity rate to Stockyards was contrary to the long-and-short-haul provision of the Constitution.

Defendant claims that as Stockyards is the only place where facilities are provided for loading and unloading stock, the fact that the class rates from points north of Stockyards through Stockyards to Emery-

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ville are less than the commodity rates from the same points to Stockyards, and that class rates from points south of Stockyards through Stockyards to West Berkeley are less than commodity rates from the same points to Stockyards, should not raise the question of the long-and-short haul prohibition of the Constitution.

We find no allegation in the complaint or proof in the testimony that any shipment moved over the longer distance under the alleged lower rate. Therefore, neither the allegations of the complaint nor the evidence in the case justify any finding by the Commission with reference to this point.

While not unmindful of the duty of common carriers to furnish adequate facilities for the loading and unloading of freight accepted for transportation the Commission will not at this time pass upon the reasonableness of defendant's practice of providing facilities for loading and unloading stock at some points and not at others as that matter is not at issue in this case.

Defendant further contends—and we find by reference to tariffs mentioned that this contention is correct—that the shipments in question moved under Southern Pacific Tariff No. 1214, which tariff contained the following notice to shippers:

"STATIONS WITHOUT STOCKYARDS.

"To or from stations where there are no stockyards or loading chutes, the rates named in the tariffs of the Southern Pacific Company lawfully on file with the Interstate Commerce Commission and state railroad commissions will apply only where shippers furnish the necessary appliances for loading or unloading stock, which must be done at their own expense and risk."

Complainant contends that rates should have been assessed on these movements under

Tariff C. R. C. No. 12, effective November 9, 1909.
Tariff C. R. C. No. 134, effective October 10, 1909.
Tariff C. R. C. No. 725, effective June 6, 1910.

Each of these tariffs carries a reference to the notice on Tariff No. 1214 just quoted.

Under all the circumstances of this case we believe that the shipper had due notice that Stockyards was the only place where facilities for loading and unloading stock were provided and that if the rate to West Berkeley or Emeryville were desired, it would be incumbent upon the shipper to comply with the notice as to providing appliances for unloading the stock.

Rates to be properly compared or contrasted should be surrounded by similar circumstances and conditions. On shipments to Stockyards, where the carriers have provided facilities for loading and unloading

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stock, it is manifest that the carriers perform a different and greater service than they undertake to perform according to their published tariff on shipments to West Berkeley and Emeryville.

For this reason and for the further reason mentioned above—that the complaint contains no allegation that there was any movement to the longer distance under the lower rate and that there was no evidence introduced to show such a movement—it is held that complainant's claim for reparation on the shipments in question is not sustained and the case is hereby dismissed.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1912.

DECISION NO. 102.

IN THE MATTER OF THE APPLICATION OF RIALTO LIGHT, POWER AND WATER COMPANY FOR PERMISSION TO SELL ITS ELECTRIC LIGHT PLANT AND PROPERTY TO SOUTHERN SIERRAS POWER COMPANY.

Application No. 12.

Decided June 17, 1912.

REPORT OF THE COMMISSION.

On written request of applicant on file with this Commission, it is hereby ordered that the above entitled application be and the same is hereby dismissed.

Dated at San Francisco, California, this 17th day of June, 1912.

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DECISION No. 103.

IN THE MATTER OF THE APPLICATION OF TRUCKEE RIVER GENERAL ELECTRIC COMPANY FOR PERMISSION TO DEVIATE FROM PUBLISHED RATES FOR ELECTRIC CURRENT.

Application No. 79.

Decided June 17, 1912.

REPORT OF THE COMMISSION.

Truckee River General Electric Company having filed with this Commission its application for permission to charge and collect from the Floriston Pulp and Paper Company a rate for electric current lower than the schedule of rates heretofore filed with this Commission, and this Commission having as yet been unable to make the investigations which it may hereafter make into the question of deviations of public utilities from schedules of rates filed with this Commission, and this Commission being willing in the mean time to permit applicant to make the deviations specified in its application,

It is hereby ordered that permission be and the same is hereby granted to the Truckee River General Electric Company, until the further order of this Commission, to charge and collect rates for electric current supplied to said Floriston Pulp and Paper Company less than the charges shown on its schedules on file with this Commission.

Dated at San Francisco, California, this 17th day of June, 1912.

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DECISION No. 104.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS RAILROAD AT GRADE OVER THE RAILROAD OPERATED BY THE SOUTHERN PACIFIC COMPANY AT AND NEAR THE INTERSECTION OF "M" STREET WITH FRONT STREET, CITY OF SACRAMENTO, STATE OF CALIFORNIA.

Application No. 84.

Decided June 17, 1912.

REPORT OF THE COMMISSION.

Northern Electric Railway Company having heretofore, on June 4, 1912, filed with this Commission its application for permission to construct its railroad at grade across the railroad of the Southern Pacific Company at and near the intersection of "M" street and Front street in the city of Sacramento, Sacramento County, California; and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that the applicant has entered into a contract with the Southern Pacific Company relative to the construction, maintenance, operation, and protection of said crossings, and that applicant has secured the necessary franchise or permit from the city council of the city of Sacramento authorizing the construction and operation of the proposed tracks on "M" street and Front street; and it further appearing from the report of the engineer of the Commission that it is not reasonable nor practicable to avoid grade crossings at said points of proposed crossing, and that said application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Northern Electric Railway Company to construct its railroad at grade across the railroad operated by the Southern Pacific Company in Sacramento, California, at and near the intersection of "M" street with Front street, and in accordance with the plans and profiles submitted by the Northern Electric Railway Company, subject to the following conditions, viz:

(1) The crossing frogs necessary for the said grade crossings shall be installed in accordance with the terms of a certain contract of date August 8, 1911, entered into between the Southern Pacific Company and Northern Electric Railway Company, a copy of which is filed with the application.

(2) The terms of said contract between the Southern Pacific Com-

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pany and Northern Electric Railway Company relative to the construction, maintenance, operation, and renewal of interlocking and other protective devices for said crossing and the division of the expense thereof are hereby approved by the Commission, except as follows:

(*a*) The plans and specifications for the interlocking and other protective devices must be submitted to and receive the approval of the Commission before they are installed;

(*b*) The interlocking and protective devices must be maintained and operated in accordance with such rules and regulations as the Commission may issue governing in such matters;

(*c*) Before such interlocking and protective devices are placed in operation, they must be inspected by the Commission and an order issued approving them.

(3) Until an interlocking device is installed for the protection of the crossings and its operation approved by an order of the Commission, a flagman must be provided at the crossings for the protection of trains, and also for the protection of highway traffic, as provided in said contract of date August 8, 1911.

(4) Until the installation of the interlocking device and its approval by the Commission, all trains, engines or cars of either company approaching said crossings must come to a full stop before reaching same and after giving proper signals pass over the crossings under full control.

(5) The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this the 17th day of June, 1912.

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DECISION NO. 105.

IN THE MATTER OF THE JOINT APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY AND CENTRAL CALIFORNIA TRACTION COMPANY FOR PERMISSION TO CONSTRUCT THEIR JOINT TRACK AT GRADE ON "X" STREET, BETWEEN EIGHTH STREET AND THIRTY-FIRST STREET, CITY OF SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA.

Application No. 97.

Decided June 17, 1912.

REPORT OF THE COMMISSION.

Northern Electric Railway Company and Central California Traction Company having heretofore on June 10, 1912, filed with this Commission their joint application for permission to construct their joint railroad at grade on "X" street between Eighth street and Thirty-first street, city of Sacramento, Sacramento County, California, crossing at grade all streets which intersect "X" street between Eighth street and Thirty-first street; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the said track proposed to be constructed on "X" street, city of Sacramento, is to be adjacent to and parallel with a track now owned and operated jointly by applicants on "X" street, and that said track will serve the purpose and permit the operation of a double track system upon said "X" street; and it further appearing that applicants have secured the necessary franchises or permits from the city council of the city of Sacramento authorizing the construction and operation of the proposed track on "X" street; and it further appearing that it is not reasonable nor practicable to avoid grade crossings with the streets intersecting "X" street between Eighth street and Thirty-first street, and that said application should be granted, subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted to Northern Electric Railway Company and Central California Traction Company to construct their railroad on "X" street in the city of Sacramento, California, crossing all streets which intersect "X" street, between Eighth street and Thirty-first street, at grade in accordance with the petition of applicants, subject to the following conditions, viz:

(1) The track shall be constructed in accordance with requirements and as prescribed by the ordinances of the city council of the city of Sacramento, California, permitting the construction of said track.

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(2) The crossing shall be forever hereafter maintained by the applicants in good and first-class condition for the use of the public.

(3) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 17th day of June, 1912.

DECISION No. 106.

IN THE MATTER OF THE APPLICATION OF THE SAUSALITO LAND AND FERRY COMPANY FOR PERMISSION TO DEVIATE FROM PUBLISHED RATES FOR WATER.

Application No. 108.

Decided June 17, 1912.

REPORT OF THE COMMISSION.

Sausalito Land and Ferry Company having filed with this Commission its application for permission to charge and collect less for water furnished in large quantities to Mason Malt Whiskey Distilling Company than its published schedule of rates heretofore filed with this Commission, and this Commission having as yet been unable to make the investigations which it may hereafter make into the question of deviations of public utilities from schedules of rates filed with this Commission, and this Commission being willing in the mean time to permit applicant to make said deviation specified in its application.

It is hereby ordered that permission be and the same is hereby granted to Sausalito Land and Ferry Company, until the further order of this Commission, to charge and collect rates for water furnished to the Mason Malt Whiskey Distilling Company as specified in its said application less than the charges shown on its schedules on file with this Commission.

Dated at San Francisco, California, this 17th day of June, 1912.

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DECISION No. 107.

PACIFIC GAS AND ELECTRIC COMPANY,
vs.
GREAT WESTERN POWER COMPANY.

Case No. 269.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZATIONS TO EXERCISE RIGHTS OR PRIVILEGES UNDER FRANCHISES OR PERMITS HERETOFORE GRANTED OR HEREAFTER TO BE ACQUIRED IN THE COUNTIES OF SONOMA, SOLANO, NAPA AND MARIN, AND THE CITIES OF SANTA ROSA, PETALUMA, SEBASTOPOL, NAPA, VALLEJO AND OTHER CITIES, UNDER THE PROVISIONS OF SECTIONS 50A, 50B AND 50C OF THE PUBLIC UTILITIES ACT.

Application No. 35.

Decided June 18, 1912.

Complaint alleges that respondent has been constructing and is engaged in constructing electrical transmission lines without having secured necessary franchises from the county or municipal authorities or the necessary certificate of public convenience and necessity from this Commission and that said territory is well served or could be well served from the existing lines of complainant. Application from Great Western Power Company for a certificate of public convenience and necessity.

Held, That where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in.

Held, Where utilities do not voluntarily accord to their patrons those things which are their due, or, at least, would impose upon the public authorities the burden of forcing such utilities into a realization of what their proper relationship to the public is, they are not entitled to the same consideration, when threatened with competition, as utilities which have voluntarily furnished good service at reasonable rates.

Held, That where a territory is served by a utility which has pioneered in the field, covered by a natural monopoly is completely served.

Held, As regards the major portion of the territory involved in this application, there is room for a large development in the sale of electric energy for light and power.

Held, That there will not be any necessary duplication of facilities by permitting applicant to operate in certain specified territories.

Held, That should the parties hereto enter into a rate contest, the Commission may take as the standard of reasonableness for rates in territory within its control,

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the standard voluntarily put in by these utilities within territory over which the Commission has no control. The fact that applicant had taken steps toward entering this territory prior to the effectiveness of the Public Utilities Act gives weight. The practice of utilities in charging consumers the cost of making extensions discussed.

Guy C. Earl, for applicant, Great Western Power Company.
Charles P. Cutten, for complainant, Pacific Gas and Electric Company.
W. E. Cowan, for Intervenor, California Telephone and Light Company.
A. E. Sharboro, for Intervenor, Cloverdale Light and Power Company.
Percy S. King, for Intervenor, Napa Valley Electric Company.
Frank E. Powers, for Intervenors, Vallejo Electric Light and Power Company and Vacaville Water and Light Company.

REPORT OF THE COMMISSION.

OPINION.

On April 26, 1912, the Pacific Gas and Electric Company filed a complaint against the Great Western Power Company wherein it alleged that the latter company had constructed an electric distributing line from the town of Rio Vista, in the county of Solano, in a northeasterly direction to the plant of the Central California Canneries; that the defendant was engaged in constructing a line for the transmission of electricity within the county of Solano from Rio Vista in a northwesterly direction toward the cities of Suisun and Fairfield; that the defendant had installed poles for lines to transmit electricity along the right of way of the Napa Valley Electric Railroad and over the county roads of Solano and Napa counties from Vallejo, in the county of Solano, northerly to Napa City, in the county of Napa; that the defendant was engaged in the construction of an electrical distribution system in the city of Santa Rosa, and had made surveys for its transmission lines from Rio Vista to Napa Junction through Suisun, Fairfield, and Cordelia and from Napa Junction to Napa City, from Napa City to Petaluma, through Napa and Solano counties, from Petaluma north to Santa Rosa and Sebastopol, and from Petaluma through Sonoma and Marin counties to San Rafael and Sausalito; and that a large portion of said acts had been performed since the effective date of the Public Utilities Act, March 23, 1912, and had been performed without securing the necessary franchises from the county or municipal authorities involved or the necessary certificate of public convenience and necessity from this Commission. To this complaint was assigned Case No. 269.

On May 6, 1912, the Great Western Power Company, the defendant in Case No. 269, filed Application No. 35 for a certificate, or certificates, under section 50*a* of the Public Utilities Act, that the present or future public convenience and necessity require, or will require, the construction of transmission and distribution lines and equipment for electric

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service in the county of Solano and in the city of Vallejo, the town of Fairfield, the town of Suisun, and the other cities and towns therein; in the county of Sonoma and in the city of Santa Rosa, the city of Petaluma, the town of Sebastopol, and other cities and towns therein; in the county of Napa and in the city of Napa, and in the cities and towns therein; and in the county of Marin, and in the cities and towns therein. Said corporation further made application for a certificate, or certificates, under section 50*b* of the Public Utilities Act that the present or future public convenience and necessity require, or will require, the exercise of the right or privilege of constructing, operating and maintaining transmission and distribution lines and equipment for electric service in the county of Napa under an oral permit granted to the Great Western Power Company by the board of supervisors of the county of Napa prior to March 23, 1912; and in the city of Napa and the city of Santa Rosa, under permits granted to said corporation by the respective city authorities of said cities prior to March 23, 1912. Said corporation further made application for a permit or permits under the provisions of section 50*b* of the Public Utilities Act to proceed to the completion of the work of constructing transmission and distribution lines and equipment for electrical service in the county of Napa and in the cities of Santa Rosa and Napa, begun prior to March 23, 1912, and prosecuted under permits granted prior to March 23d, but not actually exercised prior thereto, and for a permit, or permits, to exercise the right or privilege of operating and maintaining said lines and equipment in the county of Napa and in the cities of Napa and Santa Rosa under such permits after the work shall be completed. The corporation further asks for a preliminary order, or orders, under section 50*c* of the Public Utilities Act, declaring that the Commission will hereafter, upon application therefor, after said corporation has obtained franchises or permits it contemplates securing, but which have not yet been granted to it, issue a certificate, or certificates, that the present or future public convenience and necessity require, or will require, the exercise of the right or privilege granted by said contemplated franchises or permits to construct, maintain and operate transmission and distribution lines and equipment in the county of Solano and in the city of Vallejo, the town of Fairfield, the town of Suisun and other cities and towns in Solano county, in the county of Sonoma and in the cities of Petaluma and Sebastopol and other cities and towns in Sonoma County, in the county of Marin and in the cities and towns thereof, and the county of Napa and in the cities and towns thereof.

On May 9, 1912, the Great Western Power Company filed an answer to the complaint of the Pacific Gas and Electric Company in Case No. 269, and on May 28th, the Pacific Gas and Electric Company filed

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an answer and protest against the application of the Great Western Power Company. The answer of the Great Western Power Company to the complaint in Case No. 269 covers substantially the same ground as its application No. 35, and the answer of the Pacific Gas and Electric Company to Application No. 35 denies all of the substantial allegations of the Great Western Power Company's application.

Because of the fact that substantially the same issues are involved in Application No. 35 and Case No. 269, these two proceedings were combined and heard together. The Commission required the Great Western Power Company to produce evidence in support of its application, and any other evidence relative to the issues in either case, and permitted the Pacific Gas and Electric Company to produce such evidence and to present any facts which it might deem pertinent to either inquiry.

The hearing began at Santa Rosa on May 28th. On that day, the California Telephone and Light Company and the Cloverdale Light and Power Company asked leave, and were permitted, to intervene in opposition to the application of the Great Western Power Company. The former of these companies alleges that, pursuant to franchise granted it, it has been engaged in the business of distributing and selling electricity for light, heat and power in the agricultural district lying between Windsor and Fulton and between Fulton and Santa Rosa; in Guerneville and vicinity; Monte Rio and vicinity; Camp Meeker and vicinity; Duncan's Mills and vicinity; in the vicinity of Sebastopol and as far south thereof as Hessel Station; Occidental and vicinity; Graton and vicinity; Forestville and vicinity; Glen Ellen and vicinity; El Verano and vicinity; Sonoma and vicinity; Shellville and vicinity; and is making preparations to extend its lines from Hessel Station to Cotati and thence to Penn Grove, and also from Occidental to Freestone and Bodega and Valley Ford; also from Glen Ellen to Kenwood and vicinity, all of said places being within the county of Sonoma. The telephone and light company alleges that it has one hundred forty miles of distributing lines within said territory and that it has adequately and completely served, and is giving adequate and complete service to all the persons desiring electricity within such territory at reasonable and proper rates, and that the advent of a competitor into such territory would merely serve to take away from such company its patrons and would not promote the public convenience and necessity in any regard.

The Cloverdale Light and Power Company alleges that it has for more than nine years last past been supplying light and power to that portion of Sonoma County which lies north of Windsor, including the town of Windsor, and that the service of such company is ample and sufficient for the needs and requirements of the inhabitants of said

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territory. This company makes no allegation concerning the reasonableness of its rates.

On May 29, 1912, the hearing was continued at Napa, whence the Commission had proceeded from Santa Rosa. The Napa Valley Electric Company asked, and was granted leave, to intervene in the proceedings in opposition to the application of the Great Western Power Company, and in its opposition to granting such application states that from a long time prior to October 10, 1911, it has been continuously engaged in the business of producing, transmitting and selling electricity for light, heat and power in the county of Napa, and particularly in the towns of Calistoga, St. Helena, Rutherford, Oakville, Yountville, and Veterans' Home, and in all the territority within the county of Napa north of an east and west line, passing about four miles north of the city of Napa, and that it fully supplies said territory with electricity for light, heat and power, and that its rates are fair and reasonable and its service steady, efficient and dependable, and that it is fully able at all times to furnish the needs of the inhabitants of said territory, and urges that the granting of the application of the Great Western Power Company to construct and operate transmission lines within the territory served by this utility will result in the duplication of utilities and that the public convenience and necessity do not demand the granting of said application of the Great Western Power Company.

On May 31st, at the time of the hearing in Vallejo, the Vallejo Electric Light and Power Company asked, and was granted leave, to intervene in opposition to the application, and set up that it has a modern, complete, efficient and economical plant in the city of Vallejo for the generation and distribution of electricity, which is adequate to serve the future needs of the city of Vallejo and its inhabitants, and that its rates are fair, just and reasonable and its service efficient, steady and dependable.

On Saturday, June 8th, at the Commission's office in San Francisco, on the last day of the hearing, the Vacaville Water and Light Company asked, and was granted leave, to intervene in opposition to the application and alleged that it has an efficient and economical plant for furnishing electricity to Vacaville and the inhabitants thereof at fair, just and reasonable rates.

The applicant herein has filed certified copies of an ordinance of the board of supervisors of Solano County granting a franchise for electric transmission lines within said county of Solano, passed on the 3d day of June, 1912; an ordinance of the board of supervisors of Napa County granting a similar franchise for the county of Napa, passed on the 13th day of May, 1912; and likewise an ordinance of the county of Sonoma passed on the 3d day of June, 1912, granting a franchise to this company to transmit and distribute electricity within said county.

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On April 16, 1912, the city of Santa Rosa granted a franchise to this company to transmit and distribute electricity within said city and on the same day an ordinance of similar import was passed by the board of trustees of the city of Napa.

Applications for franchises are pending before the municipal authorities of the cities of Vallejo and Suisun in Solano County, and Sebastopol and Petaluma in Sonoma County.

This proceeding arises under section 50 of the Public Utilities Act, subdivisions *A*, *B*, and *C*, reading as follows:

> "Sec. 50 (*a*) No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant, or system, or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction; *provided*, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county or city or town within which it shall have theretofore lawfully commenced operation, or for an extension into territory either within or without a city and county or city or town contiguous to its street railroad, or line, plant or system, and not therefore served by a public utility of like character, or for an extension within or through territory already served by it, necessary in the ordinary course of its business; *and provided, further*, that if any public utility, in constructing or extending its line, plant or system shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable.
>
> (*b*) No public utility of a class specified in sub-section (*a*) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; *provided*, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed under

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such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion exercise such right or privilege; *and provided, further,* that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

(*c*) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. The commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the right granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate."

While the general intent of this provision of the act is plain, its application to a particular contingency is surrounded by much difficulty. It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in. It has been urged in this proceeding that where a utility occupying a field has generally served such field so that the advent of a second utility would merely serve to divide the business, then if the existing utility has the ability, if it choose to do so,

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to furnish such territory efficiently and at as reasonable rates as can be legitimately accorded by the utility desiring to enter the field, even though it had theretofore charged excessive rates or given inefficient service, yet sound economy would require the authority, which has the power to regulate the rates and service of such utility, to require the existing utility to furnish such territory adequately and cheaply and to keep the second utility out. Theoretically much can be said in favor of this contention, but to attempt to apply it would in practice defeat the very intent of the Public Utilities Act in all cases where utilities did not voluntarily accord to their patrons those things which are their due, or, at least, would impose upon the public authorities the burden of forcing such utilities into a realization of what their proper relationship to the public is. In times past in this State efforts on the part of the public authorities to force utilities to give reasonable rates and adequate service have been met with long-continued litigation, and if the public authorities have at hand an efficient and summary method of forcing public utilities to accord to their patrons such reasonable rates and adequate service, then, in our opinion, it is their duty to use it. If any territory served by an existing utility is afflicted by such utility with excessive rates of inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission should say to the existing utility "although when you had matters your own way, you lost sight of your duty to the public, yet we will still preserve for you this territory in consideration of your future good behavior,' in how many instances does any one suppose a new utility would apply to enter a territory served by an existing utility when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility? And hence if we should in the very first important contested application for a certificate of public convenience and necessity announce the rule that where the major portion of a territory is served, though inefficiently and at high rates, the result of such application will be merely to put the existing utility upon its good behavior, then we would, in effect, be saying to all the offending utilities of this State, if there be any, "you may proceed with your present methods until competition knocks at the door of your territory and only then will you be compelled to do justice," and we would be saying to every new public utility "you will knock in vain at the door of any field now served by a utility." The result would be that old utilities would keep their territory unspurred by the fear of competition, knowing always that only when it was imminent need they prepare to do justice to their patrons, and the new utilities, having no incentive to apply for permission to go into territory more or less completely, but inefficiently served, would

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limit themselves to new fields within which they would soon, in turn, assume the same attitude as would be assumed by the old utilities now doing business within the State. Rather, do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission, or other governmental authorities, to accord to the communities of this State those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory. We understand the certificate of public convenience and necessity to be in this State largely a precautionary measure. We have already dealt somewhat at length with the cases wherein we believe competition should be allowed, even though such competition will mainly serve to take patrons from the existing utility. If, however, a territory is completely served and the utility has, to the best of its ability, given fair treatment to its patrons, as already intimated, this Commission will be slow to permit a competitor to come into its territory. One of the few cases where, under such circumstances, the competitor will be permitted to enter the field, will be where the competitor can adequately furnish the commodity at a rate so much less than the rate which can be accorded by the existing utility, that the interests of the public demand the commodity at the lower rate. We are aware that this may work hardships upon small companies, and we are likewise aware that the State owes a duty to the small utility which has gone into a field and furnished the inhabitants thereof with a service which would otherwise have been denied them. When the advent of the new utility, under such circumstances, will serve, through legitimate competition, to impair the investment of the existing utility, the difference in rates which may be legitimately accorded by the new utility must be so considerable that the public interest clearly demands the rendition of the service at the lower rate before this Commission will be moved to permit the competitor to enter such field, provided, always, as we have already said, that the existing utility, be it small or great, has been doing its best to treat its patrons fairly.

Competition does not necessarily become duplication unless the field covered by a natural monopoly is completely served. California has just begun her development. We have no doubt that as a rule in this State the going in of a second utility will develop a considerable amount

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of new business, while leaving an ample field for the existing utility. Such being the case, the instances wherein this Commission will deny a certificate of public convenience and necessity by reason of the fact that another utility is already in the field will be comparatively rare. If we had as dense a population as exists in some of the eastern states, and if our territority were supporting practically the limit of its population, and practically all the territory of this State were covered by the plants of existing utilities, then under the rule we have already announced practically the only cases wherein a second utility would be permitted to compete would be those cases wherein the present utility was remiss in its duty to the public. But the fact that a power line, for instance, crosses a county and in the immediate vicinity of its line is distributing electricity for power and light purposes, certainly could not lead us to conclude that the entire territory of such county was completely occupied by the existing utility. Many thousands of horsepower of hydroelectric energy are now being developed and we have no doubt that the rapidly increasing population and the expansion of enterprise within this State will develop a market which will keep pace with the increase of the supply of this commodity.

As regards the major portion of the territory involved in this application, the testimony convinces us that there is room for a large development in the sale of electric energy for light and power. As regards the country districts and some of the cities this is true with the present population. As regards all of the territory, both city and country, it is our opinion this is true by reason of the sure increase of population to come within the next few years, and, by reason of this fact, we shall grant the application of the Great Western Power Company as to the larger portion of the territory which it seeks to enter. By reason of our conclusion that the most of the territory is not completely served, it is not necessary in every instance for us to determine the adequacy of the service of the Pacific Gas and Electric Company, and the smaller companies which operate therein, or the reasonableness of their rates. As to any territory in which we are of the opinion that the field is now almost completely covered, it will be necessary for us to discuss the adequacy of the present service and the character of the rates accorded, together with the practices which have prevailed on the part of the existing utility.

We find, as a fact, from the evidence presented in this case, that there will not be any necessary duplication of facilities by permitting the Great Western Power Company to operate in all sections of Solano County outside of incorporated cities and towns; in all sections of Napa County outside of incorporated cities and towns other than the district served by the Napa Valley Electric Company; in all sections of Sonoma

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County outside of incorporated cities and towns other than the districts served by the Cloverdale Light and Power Company, and by the California Telephone and Light Company except as hereinafter indicated, and as to such portions of said counties we find, as a fact, that the present or future public convenience and necessity require, or will require, the granting of the application of the Great Western Power Company. We find that the Pacific Gas and Electric Company is not completely serving any of this territory in which it now operates. As to all territory, which is not served by any existing utility, we are disposed to grant the application as a matter of course. As to all territory, however, which is now served by a public utility which opposes the application, the burden is upon the applicant to show that the present or future public convenience and necessity require, or will require, the granting of the application.

In re application Niagara Falls Lighting Company, Public Service Commission of New York, Second District, decided July 1, 1909.
In re application F. E. Workman, Kansas Public Utilities Commission, No. 179, decided February 5, 1912.

Such being the case, we deny the application of the Great Western Power Company to enter any territory within the county of Marin because no evidence was introduced with reference thereto, and the Pacific Gas and Electric Company, which now serves this county, opposes the application of the Great Western Power Company to enter such field. We deny the application of the Great Western Power Company to enter the district now served by the Vacaville Water and Light Company, because no evidence was introduced showing necessity for granting the application and the existing company resists the application. For the same reason, we deny the application of the Great Western Power Company to enter the district now served by the Cloverdale Light and Power Company and the Napa Valley Electric Company. These denials are without prejudice. We have had some doubt concerning the territory now served by the California Telephone and Light Company, being the Russian River territory and Sonoma Valley from Kenwood to Shellville. This company was incorporated November 23, 1911, and took over the Russian River Light and Power Company, and the Sonoma Valley Company. Before hearing of the plans of the Great Western Power Company, this company reduced its rates in both territories served by it, and also started the construction of extensions, which work has been prosecuted continuously thereafter. The officials of the company testified that it has filled all applications and can and will continue to do so at reasonable rates. With the exception of the city of Sonoma, the territory is rural, and the problem of serving all applicants at rates approaching those charged in more densely populated regions is not an

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easy one. Two residents of the Russian River territory appeared in behalf of the Great Western Power Company. One had complained to the predecessors of the existing company, but not to the present company. The other complained of failure to serve Fulton, but it also appeared that the present company has just completed a line into Fulton and will now serve that territory. Two witnesses also appeared in the matter of the Sonoma Valley territory, but their testimony, while raising doubts in the minds of the Commission, has not convinced the Commission. The petition of the Great Western Power Company does not mention the city of Sonoma, nor has that company made any application to said city for a franchise, nor did any public body in said city indicate to the Commission its views with reference to the public convenience and necessity. Because of the doubt in the Commission's mind as to the character and completeness of the service of the California Telephone and Light Company, the application of the Great Western Power Company is denied, without prejudice, in so far as it affects the territory served by the California Telephone and Light Company except as to the southern end of the Sonoma Valley in and about Shellville, where the Commission finds that public convenience and necessity will be served by the granting of the application. The policy which the California Telephone and Light Company henceforth pursues toward the residents of the territory served by it will be very persuasive on the Commission in case of a subsequent application to enter this field.

The application of the Great Western Power Company, to enter the cities of Napa, Santa Rosa, Sebastopol, Petaluma, Dixon, Suisun, and Fairfield is granted for the reason that we find that the service of the Pacific Gas and Electric Company therein is neither complete nor adequate, and that the rates charged therein, except under the stress of impending competition, have been higher than should have been maintained. As to all of these cities we find that public convenience and necessity require, or will require, the granting of the application. The applicant has not applied for a franchise from Dixon or Fairfield. As to these cities, the Commission's permission will become effective only after the applicant has secured the necessary franchise from the local authorities and has secured from the Commission an order approving the same. Hereafter this Commission will be very slow to grant a certificate of public convenience and necessity in any case in which the applicant has not in good faith applied to the local authorities for the necessary franchise, if any.

The granting of the applications to enter these cities leads us to comment upon certain practices that have too much prevailed among utilities, particularly water and power companies. The evidence discloses that the ordinary practice has been for the utility to charge to the

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consumer the cost of making the extension, usually allowing him to pay out in use of commodity. This practice is vicious. In most cases where the extension is paid for in commodity, it enables the company to acquire its property and thereby increase its capital out of its earnings, when, as a matter of fact, the money obtained for the sale of current which is applied upon such extensions is properly chargeable to income. Thus a company may, if it makes this practice uniform, extend its system over an entire city or throughout an entire county and make it appear that its revenue during the time of extension is *nil*, when, as a matter of fact, if correctly accounted for, its revenue may show such an earning upon its capital invested that it would lead a rate-fixing body to determine that the rates, which apparently yield nothing, are too high. The other vice of this practice arises in the absolutely unwarranted assumption of ownership to such extensions by the company, for the construction of which it has required the consumer to furnish the funds without according to him any return for the use of the same. Under ordinary circumstances all extensions should be made at the expense of the utility. If a utility desires to cover the fat territory comprised within its franchise, it should be required, under ordinary circumstances, to cover the lean as well. If, under extraordinary circumstances, it appears that the hope of business, present or future, is so remote as not to warrant an extension, and the consumer desiring the extension is willing to put up the money to provide the same, the ordinary canons of business decency should require that the title to the extension remain in him and not be added to the company's property in fraud of the consumer because he loses the interest, and in fraud of the public authority because the value of this extension is used to swell the total value of the plant for rate-fixing purposes.

Likewise it appears that although the Pacific Gas and Electric Company is now willing to put in the lower rates which have been offered by the Great Western Power Company, it did not show any such inclination until after the Great Western Power Company had tendered the lower rates. In order to determine whether or not the Pacific Gas and Electric Company in the congested portions of this territory has been according to its patrons the rates to which they are entitled, the Commission required a full investigation of the reasonableness of the proposed rates of the Great Western Power Company. If it had appeared that the new company was offering a rate which was less than a reasonable rate, then this Commission could not in justice hold that the Pacific Gas and Electric Company was derelict in its duty to its patrons by reason of the failure to accord voluntarily this less than reasonable rate. We are, however, of the opinion that the general scale of rates proposed by the Great Western Power Company are at least high enough and our

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only doubt is as to whether or not a complete investigation of the business of these two companies would not justify an even lower rate than is here being offered. By reason of this opinion, we feel that it is our duty to the public in the congested sections covered by the applications of the Great Western Power Company to permit the second utility to come in, even if by so doing it shall take away a portion of the business now being held by the Pacific Gas and Electric Company.

By reason of the dual regulation system in vogue in this State, we find ourselves confronted with this difficulty. We do not believe in rate wars which serve to reduce the earning of a utility below a reasonable figure. While such rate wars may bring a temporary advantage to a locality, it is our opinion that they often react ultimately to the detriment of such locality. The attitude of some of the city authorities who appeared before us seems to be that they are willing to take the very lowest rate that cutthroat competition will give. Since, when we grant this application all power over rate fixing within the cities involved goes out from under our control, we will have to leave it to the good sense of the city authorities and the good business judgment of the utilities involved to see that rates are not accorded which will be on an unreasonable scale. To the utilities we suggest that should they enter into a rate contest in these cities, this Commission may feel inclined to take as the standard of reasonableness for rates in territory within our control, the standard voluntarily put in by these utilities within territory over which we have no control, and that the Commission will take their attitude in such cases into consideration on subsequent applications by such companies to this Commission.

We do not, however, believe it is necessary for us to admonish the local authorities against allowing a condition of competition to prevail which will ultimately lead to absorption of one utility by another and an endeavor thereafter on the part of the survivor to recoup itself for its losses which ruinous competition has entailed.

Referring now to Vallejo; we are glad to say that we find that the existing utility not only seems to have attempted to do its duty by the public as regards rates and service, according to the testimony presented, but that it has made all extensions at its own expense and is now according a rate to private consumers which is but little in excess of the rates now offered by the Great Western Power Company. We believe, however, that as regards the rate given to the city for municipal purposes, this company has made too high a charge, and for that reason, while we at the present time deny the application of the Great Western Power Company to distribute electricity locally in the city of Vallejo, we find that public convenience and necessity require that it be allowed to bid on the municipal contract and on the power supplied to the local com-

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pany. The denial of the application in other respects to distribute power within the city of Vallejo is also made without prejudice to its subsequent renewal.

No evidence has been presented as to any other incorporated city or town within the territory involved. As to such incorporated cities and towns, if any, in which there is at present a public utility furnishing light and power, the application is denied, without prejudice. As to such incorporated cities and towns, if any, in which there is at present no public utility furnishing light and power, the application is granted.

We feel that the Great Western Power Company is subject to severe criticism by reason of various steps that were taken after the passage of the Public Utilities Act which should not have been taken until after the approval of this Commission. This company, however, in a measure atoned for its dereliction by promptly discontinuing its work within the disputed territory when the matter was brought to its attention by the Commission on the filing of the complaint of the Pacific Gas and Electric Company.

In considering this entire matter, we have not lost sight of one other fact which we believe should be given consideration by us. At the time of the passage of the Public Utilities Act, various enterprises were in the process of construction, and steps had been taken towards entering the field which might not have been taken had the Public Utilities Act been in effect. We might very well lay down a different rule for a new utility that now desires to begin operation and that has not invested large sums of money on the faith of its right to do business in a competitive field. While the present undeveloped condition of California might lead us to apply slightly, if any, more strict rules to a new company than to one in existence, and with its enterprise mapped out before the going into effect of this act, yet as development increases and the available market for electrical energy becomes more nearly satisfied, we believe that public policy will require us to adopt rules of increasing strictness, and when we shall have reached a development such as now exists in some of the older eastern states, as we have already said, probably the public utility of the kind for which a certificate of public convenience and necessity is required, may feel safe within its field so long as it adequately serves the public at reasonable rates and assumes that position towards its patrons which public policy demands.

ORDER.

The Pacific Gas and Electric Company having heretofore filed with this Commission its complaint against Great Western Power Company in Case No. 269, complaining of the action of the Great Western Power Company in constructing, or being about to construct, electric transmission and distribution lines in the counties of Solano, Napa, Sonoma, and

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Marin, and the respective cities and towns thereof, and Great Western Power Company having filed with this Commission its petition in Application No. 35, praying for certificates of public convenience and necessity and orders under the provisions of section 50 *a*, *b* and *c* of the Public Utilities Act, covering the work complained of by Pacific Gas and Electric Company, and California Telephone and Light Company, Cloverdale Light and Power Company, Napa Valley Electric Company, Vallejo Electric Light and Power Company, and Vacaville Water and Light Company having asked for and been granted permission to intervene and filed answers to the application of the Great Western Power Company, and said Case No. 269 and Application No. 35 having been consolidated for hearing with the consent of all parties, and notice of said hearing having been published as required by this Commission, and public hearings having been held in the cities of Santa Rosa, Napa, Vallejo, and San Francisco, the Commission hereby finds as a fact that the present and future public convenience and necessity require and will require (*a*) the granting of the application of Great Western Power Company under the provisions of section 50*a* of the Public Utilities Act as to all sections of Solano County outside of incorporated cities and towns, except the territory now served by the Vacaville Water and Light Company; all sections of Napa County outside of incorporated cities and towns other than the territory now served by the Napa Valley Electric Company; all sections of Sonoma County outside of incorporated cities and towns other than the territory now served by the Cloverdale Light and Power Company and the California Telephone and Light Company, except the southern end of the Sonoma Valley in and about Shellville; also the cities or towns of Napa, Santa Rosa, Sebastopol, Petaluma, Dixon, Suisun, and Fairfield, and also (*b*) the granting of the application of Great Western Power Company under the provisions of sections 50*b* and 50*c* of the Public Utilities Act, referring to the approval of franchises, as hereinafter in this order specified; and, the Commission hereby finds as a fact that the applicant has failed to make out its case as to the remaining territority specified in its application; and, basing its conclusion on the foregoing findings of fact, and on the further findings and statements specified in the opinion which precedes this order,

It is hereby ordered as follows:

1. The application of Great Western Power Company for a certificate under the provisions of section 50*a* of the Public Utilities Act, that the present or future public convenience and necessity require or will require the construction specified in its petition in Application No. 35, is hereby granted as to all the sections of Solano County outside of incorporated cities and towns, except the territory now served by the Vacaville Water and Light Company; all sections of Napa County outside of incorporated

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cities and towns other than the district now served by the Napa Valley Electric Company; all sections of Sonoma County outside of incorporated cities and towns other than the districts served by the Cloverdale Light and Power Company, and the California Telephone and Light Company except the southern end of the Sonoma Valley in and about Shellville; also the cities or towns of Napa, Santa Rosa, Sebastopol, Petaluma, Dixon, Suisun, and Fairfield and the city of Vallejo in so far as affects the sale of light or power to the city for municipal purposes and to the Vallejo Electric Light and Power Company; also such other incorporated cities and towns, if any, in the territory affected as are not now supplied with light and power.

2. The application of Great Western Power Company for such certificate is hereby denied, without prejudice to a further application, as to the county of Marin, the district now served by the California Telephone and Light Company (except the southern end of Sonoma Valley in and about Shellville, as to which the certificate is granted), the district now served by the Cloverdale Light and Power Company, the district now served by the Napa Valley Electric Company, the district now served by the Vallejo Electric Light and Power Company except in so far as affects the sale of light or power to the city for municipal purposes and to the Vallejo Electric Light and Power Company, to which extent the application is granted, and the district now served by the Vacaville Water and Light Company and any other portions of Sonoma, Napa and Solano counties as to which the application is not granted.

3. The application of Great Western Power Company, under the provisions of section 50*b* of the Public Utilities Act for a certificate that public convenience and necessity require the exercise of rights or privileges under a franchise or permit granted subsequent to March 23, 1912, is hereby granted as to franchises heretofore passed and adopted as follows: County of Napa, May 13, 1912, county of Sonoma, June 3, 1912; county of Solano, June 3, 1912; city of Santa Rosa, April 16, 1912; and city of Napa, April 16, 1912—except in so far as the exercise of rights or privileges under such franchises would be contrary to the provisions of paragraph 2 of this order, to which extent the application is denied, without prejudice.

4. The application of Great Western Power Company, under the provisions of section 50*c* of the Public Utilities Act for an order declaring that this Commission will hereafter, upon application, issue a certificate that public convenience and necessity require the exercise of rights or privileges under franchises not now, but hereafter to be secured, from the cities or towns of Petaluma, Sebastopol, Suisun, Fairfield, and Dixon is hereby granted.

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5. The application of Great Western Power Company, under the provisions of section 50c of the Public Utilities Act for an order declaring that this Commission will hereafter, upon application, issue a certificate that public convenience and necessity require the exercise of rights or privileges under a franchise not now, but hereafter to be secured, from the city of Vallejo, is hereby denied, without prejudice, except as to the sale of light or power to the city for municipal purposes or to the Vallejo Electric Light and Power Company, to which extent the application is granted.

6. The complaint of Pacific Gas and Electric Company is hereby sustained in so far as its prayer comports with the foregoing paragraphs of this order and dismissed in so far as it fails to do so.

In view of the fact that the Great Western Power Company seems to have been acting under a misunderstanding as to the effect of the Public Utilities Act and promptly ceased to work in the territory affected when its attention was directed to the matter by this Commission, no penalty will be assessed on said company for having performed construction work without having first secured this Commission's permission in a case covered by Section 50 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of June, 1912.

DECISION NO. 108.

IN THE MATTER OF THE APPLICATION OF SANTA MARIA GAS AND POWER COMPANY FOR PERMISSION TO CHARGE LESS THAN THE RATE SPECIFIED IN PUBLISHED SCHEDULES.

Application No. 96.

Decided June 20, 1912.

REPORT OF THE COMMISSION.

Santa Maria Gas and Power Company having filed with this Commission its application for permission to deviate from its published rate of $1.35 per thousand cubic feet of gas for the first 2,000 feet, with an additional $1.00 per thousand feet for each additional 1,000 feet, with a minimum charge of $1.35, so as to reduce said rate to a flat rate

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of $1.00 per thousand feet, said reduced rate to apply to consumers of applicant's gas in the vicinity of Santa Maria, said application is hereby granted to be effective immediately.

And said applicant having further petitioned for permission to furnish gas free to J. T. Avington at Betteravia, California, in exchange for his services in collecting applicant's gas bills at said place, and this Commission not having as yet made the investigations which it may hereafter make so as to determine in what cases, if any, it will permit gas to be furnished at less than schedule rates, and being willing in the mean time to grant the application in this respect until the further order of the Commission, said application is hereby granted with reference to Mr. Avington until the further order of this Commission.

Dated at San Francisco, California, this 20th day of June, 1912.

DECISION NO. 109.

IN THE MATTER OF THE APPLICATION OF THE QUINCY WESTERN RAILWAY TO INCREASE PASSENGER FARES.

Application No. 41.

Decided June 26, 1912.

It appearing from an investigation of the records of applicant that the railroad is not earning operating expenses, and that unless additional business is developed by an extension of the road it will have great difficulty, even with the increase in passenger rates now asked, to meet its operating expenses, and there being no opposition to the proposed increase, the application is granted.

REPORT OF THE COMMISSION.

ESHLEMAN and THELEN, *Commissioners.*

This is an application of Quincy Western Railway to increase its one way and round trip passenger fares between all points. Applicant asks authority to increase its one way fare between Quincy and Marston from forty-five to fifty cents and its round trip fare from fifty to seventy cents. As the business of the road is practically confined to the carrying of freight and passengers between the termini at Quincy and Marston, formerly known as Hartwell, we shall confine ourselves in our opinion to those points.

An investigation of the records of the applicant develops the fact that between 75 and 80 per cent of the passenger business handled is on single trip tickets. The total number of single trip tickets sold for

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the year from June 1, 1911, to June 1, 1912, between Quincy and Marston was approximately 7,650, while the round trip tickets amounted in number to approximately 2,250. It appears that the increased revenue which the applicant will obtain if permitted to charge its increased fares between all points, will amount to about $800 per year.

It is apparent from an investigation of the records of the applicant that the railroad is not even making operating expenses. It is also clear that unless additional business is developed by an extension into the timber country adjacent to Quincy, the railroad will have great difficulty, even with the increase in passenger rates now asked, to meet its operating expenses. It should be noted in this connection that an increase in passenger fares does not necessarily mean an increased revenue, and that in this case a trial of the proposed rates will alone show the effect on applicant's revenue.

Although notice of the hearing was published in both the Quincy newspapers and although the Commission journeyed to Quincy so as to give possible protestants an opportunity to be heard, no one appeared to oppose the application. We take it from this failure to object, that the citizens of Quincy are content to permit the proposed increase in fares to be made, at least until they can see what the effect thereof will be on applicant's revenue. The Commission has had some doubt authorizing the increase, particularly in view of the fact that the patrons of only a portion of the contemplated enterprise are being asked to pay on the foundation cost for the entire enterprise. However, we have decided, in view of the undoubted deficit in operating expenses, and of the acquiescence of the citizens of Quincy, to try out the proposed new fares and to grant the application, and submit herewith the following order:

ORDER.

On the facts as found in the above opinion it is hereby ordered that the application be and the same is hereby granted, and applicant is directed to publish, distribute and file with the Commission, within ten days from the service of this order, a tariff of passenger rates in accordance with this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1912.

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DECISION NO. 110.

IN THE MATTER OF THE APPLICATION OF THE NEVADA-CALIFORNIA-OREGON RAILWAY FOR PERMISSION TO INCREASE PASSENGER FARES.

Case No. 255.

Decided June 26, 1912.

Applicant, alleging that the transportation rates charged by it do not yield an adequate return on the investment, asks for permission to increase certain passenger fares. It was found that, without considering the large amount charged to profit and loss, applicant has earned a fair return on a fair value of its property.

Held, The public cannot be expected to pay rates high enough to yield, not only fair returns on the investment, but to create a fund for construction of extensions and later be called upon to provide interest thereon.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This case covers the application of the Nevada-California-Oregon Railway to increase certain passenger fares to the basis of 7 cents per mile, which would have the effect of raising a great many individual fares on this line. The carrier bases its application on the fact that for the fiscal year ending June 30, 1911, its books show that the gross earnings have decreased approximately $100,000 over the fiscal year ending June 30, 1910, which decrease it is urged is due to the completion of the Western Pacific Railway, which had been shipping a great deal of construction material over the lines of the applicant and also the loss of business due to competition of the Western Pacific after that line commenced operations.

It is also claimed by the applicant that the present revenues do not yield an adequate return. It was admitted at the hearing by a witness for the applicant that so far as freight business to and from points north of Doyle (the junction of the Western Pacific Railway) is concerned sixty-five per cent of the total moved between points where the divisions accruing to the Nevada-California-Oregon Railway were practically the same as though the business moved via Reno, notwithstanding the Nevada-California-Oregon Railway on such movement hauls the freight about 50 miles less distance. Of that proportion of the remaining 35 per cent which may be handled in connection with the Western Pacific Railway the divisions accruing to the Nevada-California-Oregon are somewhat lower than via Reno, but I doubt if this sufficiently

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affects the revenue of the applicant to counteract the advantage of the shorter haul of the larger quantity through Doyle.

It appears on investigation of the records of the applicant that the operating revenue of its line decreased from $447,857 in 1910 to $338,967 in 1911. The total income of this property, after deducting operating expenses and taxes for eleven years—1901 to and including 1911—amounted to approximately $1,383,000. Disposition of this total net income was made in the following approximate amounts:

Rents	$820 00
Interest on funded debt	303,250 00
Sinking fund	58,480 00
Other deductions not accounted for	49,000 00
Total	$411,550 00

which leaves a surplus of approximately $994,337 including $22,997 surplus carried forward from accounts of 1900. The disposition of this surplus appears in approximate figures to be as follows:

Permanent improvements and betterments	$131,000 00
Dividends on stock	216,000 00
Other deductions not accounted for	70,000 00
Depreciation and renewal fund	57,000 00

which leaves a balance of approximately $500,000 for which no accounting has been made.

In the data submitted to the Commission, the applicant states:

> "We have recently built 53 miles of railroad into Lakeview, Oregon, without increasing our capital stock or bonded indebtedness."

It will be interesting to note the source of this fund in determining whether or not this and other extensions of the original Nevada-California-Oregon road have been largely constructed from the earnings of the property.

In 1900 the applicant operated 129 miles of road which was capitalized as follows:

Common stock	$1,450,000 00
Preferred stock	750,000 00
Bonded indebtedness	385,000 00
Total capitalization	$2,585,000 00

From these figures it will be seen that the outstanding stock—common and preferred—is the same in 1911 as in 1900, while the bonded indebtedness has increased $586,000.

According to the records of the applicant on file with the Commission the total cash realized from sale of bonds from 1901 to 1911 amounts to $357,320, which is all of the new money invested in the property in these eleven years. During this period the mileage of the line was increased by 55 miles, the distance from Termo to Alturas, and later by an additional 53 miles from Alturas, California, to Lakeview, Oregon.

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Thus it will be seen that 119 miles of new line was constructed from 1900 to date and the amount of new capital invested was $357,320, or about $3,000 per mile.

The applicant, however, insists that the road has a physical valuation of over $15,000 per mile, and if such be the case, either a large amount of money must have been applied to construction from earnings or the road has vastly increased in value over its cost.

According to the last record in the assessor's office in Alturas the officials of the Nevada-California-Oregon Railway placed a value of about $2,000 per mile on that part of the line running through Modoc County, but we are becoming so accustomed to sworn statements of values for taxation purposes being very much lower than sworn statements of values of the same properties for rate fixing purposes that I shall merely call attention to this discrepancy without further comment.

There does appear in the record, however, evidence to show the cost of these extensions and such evidence discloses the fact that a considerable amount of money from net earnings has been applied on this new line. No evidence has been produced to show any large increment of value over the actual cost, and this being an application to increase rates and the burden being on the applicant, such evidence if it exists should have been produced in justification of the high value here urged. In fact, it affirmatively appears that no circumstances now exist which would add any substantial amount to a reproduction value over an original cost value. The principal factor urged by the railroad's representative as determinative of the present value of the road is its outstanding stock and bond issues. This is not at all persuasive and to ask this Commission to adopt such a basis of valuation is a reflection upon the intelligence of its members.

In the eleven years, 1901 to 1911, inclusive, the applicant appears to have disbursed approximately the following from earnings:

Interest on funded debt	$303,251 00
Sinking fund for funded debt	58,480 00
Dividends on stock	216,000 00
Permanent improvements and betterments	131,282 00
Deductions not accounted for	120,000 00
Total	$829,013 00

This amount represents 5 per cent interest on $1,507,320, or a valuation of $8,200 per mile of road.

If we consider in addition to the above the amount of $505,291, which is found to be charged to profit and loss during this period, it will be found that the property yielded 5 per cent interest on $2,426,000 or 5 per cent on a valuation of $13,200 per mile.

There was also placed in the depreciation and renewal fund during this time $57,109. Assuming that the funds realized from the sale of

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bonds since 1900, amounting to $357,320, and the entire amounts charged to profit and loss of $505,291, were expended in construction of the 119 miles from Termo, California, to Lakeview, Oregon, we have a cost over this extension of $7,250 per mile.

So it appears that although the net earnings would yield a profit of 5 per cent on a valuation of $13,200 per mile, yet the actual cost of construction on all the mileage concerning which testimony was introduced was but $7,250 per mile.

Considering all of the facts and the evidence submitted by the applicant, I am forced to the conclusion that without even considering the large amount charged to profit and loss, the Nevada-California-Oregon Railway has earned a fair return on a fair value of its property.

The public cannot be expected to pay rates high enough to yield, not only fair returns on the investment, but to create a fund for construction of extensions and later be called upon to provide interest thereon.

I believe the present rates amply remunerative and the application is denied.

The foregoing decision is hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1912.

DECISION No. 111.

IN THE MATTER OF THE APPLICATION OF BAKERSFIELD WATER COMPANY FOR PERMISSION TO ISSUE BONDS OF THE PAR VALUE OF FIFTY THOUSAND DOLLARS AND TO EXECUTE A FIRST MORTGAGE TO SECURE THE SAME.

Application No. 86.

Decided June 27, 1912.

REPORT OF THE COMMISSION.

Whereas this Commission's order, dated June 20, 1912, in the application entitled as above, provided that the interest on the bonds therein authorized should be payable on the first day of April and the first day of October of each year, and that the bonds should mature on the first day of April of the year in said order specified; and,

Whereas applicant has now petitioned that said date be changed so that the interest shall be payable on the first day of January and the

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first day of July of each year and the bonds shall mature on the first day of July of the years in said order specified; and,

Whereas this Commission is willing that said change be made,

It is hereby ordered that this Commission's said order, dated July 20, 1912, be and the same is hereby amended so as to provide that the interest on the bonds therein authorized to be issued shall be payable on the first day of January and the first day of July of each year and so as to provide further that said bonds shall mature on the first day of July of the years in said order specified.

Dated at San Francisco, California, this 27th day of June, 1912.

DECISION No. 112.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF SUPERVISORS OF MADERA COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A PUBLIC HIGHWAY CROSSING AT GRADE OVER THE TRACKS OF THE SOUTHERN PACIFIC COMPANY AT CALIFA, MADERA COUNTY, CALIFORNIA.

Application No. 99.

Decided June 27, 1912.

REPORT OF THE COMMISSION.

Board of Supervisors of Madera County, California, acting by and through its chairman, W. A. Ellis, and Clerk, W. R. Curtin, having heretofore on June 11, 1912, filed with this Commission its application for permission to construct a public highway, as hereinafter indicated, at grade across the tracks of the Southern Pacific Company in the town of Califa, Madera County, California; and, it appearing to the Commission that this is not a case in which a public hearing is necessary; and that the Southern Pacific Company agrees to said crossing at grade as prayed for in said application; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to the board of supervisors of Madera County, California, to construct a public highway at grade across the tracks of the Southern Pacific Company in the town of Califa, Madera County, California, said crossing being at the

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intersection of Broadway (street) of said town as shown on the map attached to said application, subject to the following conditions:

(1) That the expense of grading and constructing said crossing on each side and up to the tracks of the Southern Pacific Company shall be borne by the said county of Madera.

(2) That the expense of constructing said crossing over and between the tracks of said company, including the necessary plank and guard-rails, and gravel, broken stone or other character of materials necessary to construct said crossing in a first-class and substantial manner suitable for the safe and convenient passage of the public, shall be borne by said Southern Pacific Company.

(3) Said crossing shall be constructed of a length not less than 48 feet, with grades of approach not exceeding 8 per cent.

(4) Said crossing, including such portion of the approaches as may be on the property of the Southern Pacific Company, shall be hereafter maintained in first-class and safe condition for the use of the public, by said company.

(5) As soon as the proposed new crossing at Broadway is completed and ready for use of the public, the said board of supervisors shall issue the necessary order and abandon for public use and close the present public highway crossing of the "county road" now crossing over the tracks of said company about 1,600 feet south of the proposed crossing at Broadway.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 27th day of June, 1912.

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DECISION NO. 113.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK AT GRADE ACROSS MYRTLE AVENUE, TOWN OF LOS ALAMITOS, ORANGE COUNTY, CALIFORNIA.

Application No. 113.

Decided June 27, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on June 22, 1912, filed with this Commission its application for permission to construct at grade a spur track is hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and it further appearing that the applicant has secured the necessary franchise or permit for the crossing from the board of supervisors of Orange County, California, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its track at grade across the public highway known as Myrtle avenue, in the town of Los Alamitos, Orange County, California, between Cerritos street and Sausalito street, and as shown by the map attached to said application, subject to the following conditions, viz:

(1) The entire expense necessary to construct and complete said crossing shall be borne by Southern Pacific Company.

(2) The company shall hereafter forever maintain said crossing in good and first-class condition for the use of the public.

(3) The grades of approach shall not exceed 8 per cent, and the width of the crossing shall not be less than 24 feet.

(4) The company shall ballast said crossing with gravel, broken stone, or other first-class material suitable for the purpose.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 27th day of June, 1912.

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DECISION NO. 114.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF SPUR TRACKS AT GRADE ACROSS SIXTH STREET, CITY OF REDLANDS, SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 119.

Decided June 27, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore filed on June 25, 1912, its application to construct at grade its spur tracks as hereinafter indicated, and it appearing to the Commission that this is a case in which a public hearing is not necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed points of crossing; and it further appearing that the applicant has secured the necessary franchise or permit from the city of Redlands, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its two spur tracks at grade, in the city of Redlands, county of San Bernardino, California, and described as follows:

"*New track.*—Beginning at a point in the center line of the Southern Pacific Company's present spur track in Redlands avenue, said point being at the present westerly terminus of aforesaid track and distant easterly 10 feet, more or less, from the prolongation across Redlands avenue to the easterly line of Sixth street; thence westerly along Redlands avenue and across the intersection of Sixth street 60 feet, more or less, to a point near the northwest corner of Redlands avenue and Sixth street; thence westerly 170 feet, more or less, across private property."

"*Track rearranged.*—Beginning at a point in the center line of the Southern Pacific Company's present spur track in Redlands avenue, said point being distant northerly 18 feet, more or less, at right angles from the center line of the Southern Pacific Company's main track in Redlands avenue and distant 10 feet, more or less, easterly measured parallel with aforesaid center line from its intersection with the prolongation of the easterly line of Sixth street across Redlands avenue; thence westerly along an irregular curve a distance of 180 feet, more or less, to a connection with the present spur track of the Southern Pacific Company at a point

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distant northerly 31 feet, more or less, at right angles from the center line of the Southern Pacific Company's present main line track in Redlands avenue."

Subject to the following conditions, viz:

(1) The entire expense to complete said crossing shall be borne by the said railroad company.

(2) The railroad company shall hereafter forever maintain said crossing in good and first class condition for the use of the public.

(3) The grades of approach to said crossing shall not exceed 8 per cent and the width of roadbed at crown shall not be less than 24 feet.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 27th day of June, 1912.

DECISION No. 115.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SIDETRACK AT GRADE ACROSS SECOND STREET IN THE CITY OF SAN BERNARDINO, SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 120.

Decided June 27, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on June 25, 1912, filed with this Commission its application for permission to construct at grade a sidetrack as hereinafter indicated, and it appearing to the Commission that this is a case in which a public hearing is not necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and it further appearing that applicant has secured the necessary franchise or permit from the city of San Bernardino, and that said application should be granted subject to the conditions herein specified.

It is hereby ordered that permission be granted to Southern Pacific

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Company to construct its sidetrack at grade across Second street between "E" street and "F" street in the city of San Bernardino, San Bernardino County, California, as indicated on the map attached to said application, subject to the following conditions:

(1) The entire expense to construct and complete said crossing shall be borne by Southern Pacific Company.

(2) The company shall hereafter forever maintain said crossing in good and first-class condition for the use of the public.

(3) The width of the crossing shall not be less than 24 feet, and shall be ballasted with gravel, broken stone, or other suitable material.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 27th day of June, 1912.

DECISION NO. 116.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF SIX HUNDRED THOUSAND SHARES OF COMMON STOCK AND SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS, FACE VALUE, OF BONDS.

Application No. 38.

Decided June 29, 1912.

The Tidewater and Southern Railroad Company and the Tidewater and Southern Transit Company were consolidated in the applicant herein, the Tidewater Southern Railway Company, March 11, 1912. None of applicant's capital stock had been issued at the date of the hearing, June 25, 1912. While, under the articles of incorporation and consolidation, and under section 473 of the Civil Code, the stockholders of the consolidated corporations were entitled to receive shares of stock to the amount of their holdings, in the new corporation the exchange had not been made prior to March 23, 1912, or at all.

Held, In strict compliance with the provisions of section 52 of the Public Utilities Act, it is probably necessary for applicant to secure the Commission's approval to the issue of this stock amounting, par value, to $2,899,395, but in view of the prior rights of the parties in the matter the issue will be permitted without the careful scrutiny which the Commission would otherwise give to it, it being provided, however, that of said issue the promoter will at once cancel and return to the treasury a certificate for $188,600 capital stock, when issued, and

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that he will file with the treasurer of applicant an agreement to deliver for cancellation, seven years after date, a certificate for said capital stock in the par value amount of $2,000,000, when issued, said capital stock in the above amounts having been issued to the promoter for the purposes of control. The certificate for $2,000,000 capital stock shall be delivered to the Commission when issued and will be stamped: "Issued for voting purposes only. Not to be transferred, and to be canceled and returned to the treasury on or before July 1, 1912, as provided in agreement dated July 1, 1912, between Byron A. Bearce and Tidewater Southern Railway Company."

Held, That the Commission does not by this opinion commit itself to a policy of sanctioning the issue of stock for control only.

Applicant also permitted to issue $600,000 capital stock and $750,000 bonds, the stock to be sold at not less than 80 and the proceeds of all the securities to be used for the various purposes specified.

Byron A. Bearce, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application on the part of Tidewater Southern Railway Company for an order of this Commission approving the issue of 600,000 shares of common stock having a par value of $600,000 and bonds having the face value of $750,000.

Tidewater Southern Railway Company filed its articles of incorporation and consolidation in the office of the Secretary of State on March 11, 1912. The corporation was created by consolidation, under the provisions of section 473 of the Civil Code, of the Tidewater and Southern Railroad Company and the Tidewater and Southern Transit Company. The consolidated corporation has power, among others, to build a railroad of standard gauge, to be operated by steam, electricity or other lawful motive power from Stockton, through Modesto, Turlock, and other cities and towns to Fresno, a distance of 147 miles, with branch lines aggregating some 80 miles. Its total authorized capital stock is $5,000,000, divided into 5,000,000 shares of the par value of $1.00 each, of which 250,000 shares are preferred and 4,750,000 are common.

Applicant has acquired its right of way, except a few parcels, between Stockton and Turlock. It has laid 7½ miles of track from Modesto north and 5½ miles from Turlock west, and has graded 20 additional miles from Stockton south, acquired franchises in Stockton, Modesto and Turlock. Applicant avers that it and its predecessor have spent $210,261.68 in construction work, that they have acquired 293.15 acres of land near Escalon, having a value of $27,000 and that it has cash on hand of $30,583.72. Its line between Stockton and Modesto will traverse a rich territory between the lines of the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway. Beyond Modesto the line will swerve to the west and thence to Turlock.

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The Tidewater and Southern Railroad Company, one of the consolidated corporations, was incorporated to construct a railroad from Stockton to Turlock, with a branch line from Atlanta to Ripon. Its authorized capital stock was 1,000,000 shares of the par value of $1.00 per share, of which 250,000 were preferred and 750,000 common. Of the amount so authorized, 653,085 shares of common stock, having a par value of $653,085 and 57,110 shares of preferred stock, having a par value of $57,110 were issued. Of this amount, 350,000 shares were issued to J. A. Mehling and other promoters for rights of way and promotion services, and 360,175 shares were sold at par, with an expense of about 20 per cent for commissions. From the proceeds of the stock so issued and sold, the corporation secured the property hereinbefore described as now belonging to applicant, except such rights of way from Turlock to Fresno as applicant has acquired from the Tidewater and Southern Transit Company.

The Tidewater and Southern Transit Company, the other consolidated corporation, was incorporated on February 16, 1912, to construct a railroad from Turlock to Fresno, with various branch lines. Its authorized capital stock was 4,000,000 shares of the par value of $1.00 each, all common, of which 2,188,600 shares were issued to Byron A. Bearce for certain rights of way which Mr. Bearce claims to have acquired between Turlock and Fresno and assigned to the corporation.

Of the 5,000,000 shares of applicant's authorized stock, the evidence shows that no share had been issued at the date of the hearing, on June 25, 1912. The statement in the application that 2,899,395 shares had been issued is not true. While, under the articles of incorporation and consolidation and under the provisions of section 473 of the Civil Code, the stockholders of the consolidated corporations were entitled to receive shares of stock to this amount in the new corporation, these shares had not been issued prior to March 23, 1912, or at all. In strict compliance with the provisions of section 52 of the Public Utilities Act, it is probably necessary for applicant to secure this Commission's approval to the issue of this stock. As the consolidation was effected prior to March 23, 1912, and as the stockholders in the two consolidated corporations thereupon became entitled to have stock in the new corporation issued to them, and as Mr. Bearce has agreed to certain conditions which I shall hereafter specify, I recommend that the Commission's permission to the issue of this particular stock be given, without the careful scrutiny which the Commission would otherwise give to it. Mr. Bearce has agreed that he will at once cancel and return to the treasury certificate for 188,600 shares, when issued, and that he will file with the treasurer of the corporation an agreement to deliver to the corporation for cancellation, seven years after date, certificate for

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2,000,000 shares, when issued. The certificates for which these certificates are to issue were issued to Mr. Bearce by the Tidewater and Southern Transit Company principally for the purpose of control. The certificate for 2,000,000 shares will be delivered to the Railroad Commission when issued, and will be stamped "Issued for voting purposes only. Not to be transferred, and to be canceled and returned to the treasury on or before July 1, 1919, as provided in agreement dated July 1, 1912, between Byron A. Bearce and Tidewater Southern Railway Company." The cancellation of the certificate for 188,600 shares, the delivery of the certificate for 2,000,000 shares to this Commission for its endorsement thereon, and the delivery to applicant of Bearce's agreement, as aforesaid, should be made conditions precedent to the effectiveness of the order on this application.

It should be distinctly understood that the Commission does not by this opinion commit itself to a policy of sanctioning the issue of stock for control only. The arrangement hereinbefore outlined will be made in view of the particular facts of this case, in which it appears that the 2,000,000 shares of stock were issued by the Tidewater and Southern Transit Company to Mr. Bearce prior to March 23, 1912, the effective date of the Public Utilities Act, and that Mr. Bearce was entitled, by the consolidation, to have applicant issue an equivalent number of shares to him.

Applicant asks for an order authorizing the issue of $600,000, par value, of common stock and $750,000 face value of bonds. Of the $600,000, the proceeds of 350,000 shares are alleged in the petition to be desired for the acquisition of equities in rights of way and franchises from Stockton to Fresno, while the proceeds of stock of the par value of $250,000 and of bonds are to be used in the construction, completion, extension and improvement of its line of railroad from Stockton to Turlock. It appeared on the hearing, however, that the shares of stock to be used for the acquisition of equities in rights of way and franchises are already covered by 350,000 out of the 710,195 shares heretofore issued by the Tidewater and Southern Railroad Company, one of the consolidated companies, and that applicant really desires the issue of this stock to enable it to be transferred when the persons who have subscribed for some $300,000 of the stock of said Tidewater and Southern Railroad Company, and have given their notes therefor, pay the notes and ask for their certificates. The remaining shares out of the 350,000 so desired are to be issued to the salesmen who sold the $300,000 of said stock, and who, so Mr. Bearce testified, have not been paid, but had agreements that they would be paid on the payment of the notes. Mr. Bearce also stated that considerably less than 50,000 shares would be required for this purpose. I recommend that 300,000 shares,

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or so much thereof as may be necessary, be authorized to be issued to the subscribers above referred to, as their notes are paid, and that 50,000 shares, or so much thereof as may be necessary, but not more, be issued to the salesmen in accordance with their agreement with the Tidewater and Southern Railroad Company, if any, and that in each case the applicant be required to file with this Commission the transferee's signed and verified receipt, stating that as salesman he sold the appropriate number of shares to the subscriber at a price indicated and that it was agreed between himself and the Tidewater and Southern Railroad Company that he should be paid a specified sum for his services.

The purposes for which the proceeds from the remaining 250,000 shares of stock and the bonds are to be devoted are specified in Exhibit "G" filed with the application. The items cover estimate of cost of completion of the Tidewater Southern Railway from Stockton to Turlock and their total are as follows:

Rights of way and station grounds	$25,000 00
Grading and moving buildings and irrigation ditches and checks	20,506 00
Two steel bridges, Tuolumne River	30,900 00
Completing Stanislaus River bridge	30,469 50
Pile trestles	20,505 00
Culverts	2,500 00
Ties	70,015 00
Rails	161,576 00
Frogs and switches	5,625 00
Track fastening and other material	40,335 00
Ballast	7,500 00
Track laying and surfacing, paving and gravel	47,325 00
Fencing right of way	20,300 00
Crossings and signs	2,780 00
Interlocking plant at Ceres	4,000 00
Telephone line and instruments	8,500 00
Station buildings and fixtures	15,000 00
Shop buildings and tools	15,000 00
Electric power plants, 2 transformer stations	35,000 00
Electric power transmission	211,100 00
Engineering, 3 per cent on above	23,217 78
Cars	89,200 00
Other expenses	61,837 83
Contingencies	53,669 10
	$1,001,851 21

Applicant is of the opinion that it can sell its said 250,000 shares of stock and its bonds at 80 per cent net plus accrued interest on the bonds, and I recommend that this price be fixed as the minimum sale price. I am of the opinion that for some of these securities a sum in excess of this amount can be realized. A public utility which is acting in good faith will, of course, always secure the largest possible return from the sale of its securities.

From the evidence in this case and from a personal inspection of the proposed line of railway from Stockton to Turlock, accompanied

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by this Commission's chief engineer, I find that the amounts of money specified in the foregoing estimate are reasonably necessary for the purposes therein specified, that such purposes are necessary if the railroad is to be completed and operated as an electric railroad, and that the amount of securities as to which this Commission's permission is asked in this respect is reasonably necessary to raise the funds to carry out said purpose, and I accordingly recommend that the issue of the securities, namely, 250,000 shares of stocks, and bonds of the face value of $750,000, be authorized as prayed for.

The bonds are to be secured by trust deed or mortgage, dated April 15, 1912, from Tidewater Southern Railway Company to Union Trust Company of San Francisco, of which a copy is attached to the application, to secure the issue of bonds of the face value of $4,000,000, to be 6,000 in number of which 2,000 are to be of the denomination of $1,000 each and 4,000 of the denomination of $500 each. The trust deed or mortgage contains provisions for a sinking fund. The attention of applicant at the hearing was drawn to the fact that under section 51*a* of the Public Utilities Act, this Commission's order must be secured before a public utility may mortgage any portion of its property necessary or useful in the performance of its duties to the public. Applicant thereupon asked for and was granted leave to apply for the Commission's order under said section. I recommend that such order be made.

I think it well to draw the attention of the public again to the fact that this Commission can not, when it authorizes an issue of securities guarantee the success of the enterprise. As this Commission said in Application No. 51, being the application of Stockton Terminal and Eastern Railroad Company for an order approving a proposed bond issue:

> "This Commission does not guarantee bonds, stocks or other securities which it authorizes. Ordinarily the Commission's function in passing on a proposed bond issue is principally to ascertain whether the purposes for which it is desired to secure funds are proper and whether the moneys desired for such purposes are reasonably necessary therefor and whether the bonds are sold for a reasonably high price and to take the necessary steps to assure itself that the moneys derived from the disposition of such securities are expended solely for the purposes authorized."

Attention should also be drawn again to the need of having the application show the real facts. In this case the petition was incorrect in most important respects and it was necessary to go into the entire subject matter at the hearing in order to ascertain the truth.

As is usual in cases of this kind, the Commission's order should be made conditional on the payment by applicant of the fee in connection

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with the proposed bond issue, as specified in section 57 of the Public Utilities Act.

ORDER.

Application having been made to the Railroad Commission of the State of California by Tidewater Southern Railway Company for an order authorizing the issue by said company of 2,842,285 shares of its common stock of the par value of $1.00 and 57,110 shares of its preferred stock of the par value of $1.00, to issue to the stockholders of the Tidewater and Southern Railroad Company and the Tidewater and Southern Transit Company, which two corporations have been consolidated to form the applicant corporation, and also 600,000 shares of its common stock of the par value of $1.00 per share and also first mortgage gold bonds of the face value of $750,000, said bonds to be payable on the fifteenth day of April, 1942, unless sooner redeemed, and to bear interest at the rate of 5 per cent per annum, payable semiannually on the fifteenth day of April and October of each year, and secured by a trust deed or mortgage upon all the property of the company and to execute said trust deed or mortgage, and a hearing having been duly held, and it appearing to the Commission that said stock to be issued to the stockholders of the constituent corporations of applicant should be issued and that the money to be secured by the issue of said 600,000 shares of capital stock and of said bonds is necessary and reasonably required by said corporation for the discharge of its obligations and the acquisition of property and the construction, completion, extension and improvement of its facilities, as hereinafter in greater detail specified, and that the purpose for which said moneys are to be used are not in whole or in part reasonably chargeable to operating expense or to income.

It is hereby ordered as follows:

(1) Tidewater Southern Railway Company is hereby authorized to issue 2,842,285 shares of common stock of the par value of $1.00 each and 57,110 shares of preferred stock of the par value of $1.00 each, share for share, to the shareholders of the Tidewater and Southern Railroad Company and the Tidewater and Southern Transit Company in exchange for the shares of stock owned by them in said respective companies on the condition, which condition shall be a condition precedent to the effectiveness of each and every portion of this order, that Mr. Byron A. Bearce shall have delivered to the treasurer of applicant for cancellation and shall have presented to this Commission the treasurer's receipt showing the delivery and cancellation to him of certificate for 188,600 shares of applicant's common stock and also that Mr. Bearce shall have filed with applicant's treasurer a written agreement to deliver to said applicant, for cancellation, at or before seven years

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from July 1, 1912, certificate for 2,000,000 shares of the common stock of applicant and that said certificate shall have been presented to this Commission for endorsement thereon of the words "Issued for voting purposes only. Not to be transferred, and to be canceled and returned to the treasury on or before July 1, 1919, as provided in agreement, dated July 1, 1912, between Byron A. Bearce and Tidewater Southern Railway Company."

(2) Tidewater Southern Railway Company is hereby authorized to issue 300,000 shares of its common stock of the par value of $1.00 each, or so much thereof as may be necessary, to be delivered to persons who have made their notes to the Tidewater and Southern Railroad Company for certificates of stock in said company in an amount equivalent to the certificates of stock subscribed for by said persons.

(3) Tidewater Southern Railway Company is hereby authorized to issue 50,000 shares of its common capital stock of the par value of $1.00 each, or so much thereof as may be necessary, to be delivered to salesmen who have sold the stock for which the notes referred to in paragraph 2 hereof were given, provided that no stock shall be issued under this paragraph to any person who shall not have filed with this Commission a signed and verified statement to the effect that he was a salesman employed by the Tidewater and Southern Railroad Company for the sale of stock, that he sold a certain amount of stock represented by one of said notes, and that there was an agreement between himself and the Tidewater and Southern Railroad Company, to the effect that he should be paid for his services an amount designated in said verified notice. The Commission will thereupon in each case specify whether or not it will permit stock to be issued under this paragraph.

(4) Tidewater Southern Railway Company is hereby authorized to issue 250,000 shares of its common capital stock of the par value of $1.00 each, and also bonds of the face value of $750,000, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of bonds of said company, maturing the fifteenth day of April, 1942, unless sooner redeemed, to bear interest at the rate of 5 per cent per annum, payable semiannually, under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the fifteenth day of April, 1912, made and executed by said Tidewater Southern Railway Company to Union Trust Company of San Francisco, as trustee, said stock and bonds to be issued upon the conditions following, in addition to those hereinbefore specified, and not otherwise:

(*a*) Tidewater Southern Railway Company shall sell the stock and bonds in this paragraph authorized so as to net the said company not less than 80 per cent of the par value of the stock and 80 per cent of the face value of the principal of the bonds besides interest accrued thereon.

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(*b*) The proceeds from the sale of said stock and bonds shall be applied to the following purposes only: For the acquisition and improvements of the facilities, specified in "Estimate of cost of completion of the Tidewater Southern Railway from Stockton to Turlock," which is a part of applicant's Exhibit "G."

(5) Applicant shall keep separate, true, and accurate accounts, showing the disposition made of every share of stock and every bond hereby authorized to be issued, and showing the receipt and application in detail of the proceeds of all shares of stock or bonds hereby authorized to be issued and sold, and on or before the tenth day of each month applicant shall make a verified report to the Commission, stating the sale or other disposition of such shares of stock or bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom, and the use and application of such moneys.

(6) Tidewater Southern Railway Company is hereby authorized to execute deed of trust or mortgage to Union Trust Company of San Francisco, dated April 15, 1912, a copy of which trust deed or mortgage is attached to the application and made a part thereof.

(7) The authority hereby given to issue shares of stock and bonds shall apply only to shares of stock and bonds issued by applicant on or before the thirtieth day of June, 1913. If at that time any of said stock and bonds may not have been issued, applicant may make further representations to the Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of June, 1912.

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DECISION NO. 117.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR PERMISSION TO CONTINUE TO DEVIATE FROM THE RATES, TOLLS, RENTALS AND CHARGES SHOWN IN ITS SCHEDULES OR RATES FILED WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 114.

Decided June 29, 1912.

REPORT OF THE COMMISSION.

Whereas Pacific Gas and Electric Company, on the 24th day of June, 1912, filed with this Commission its petition asking permission to continue the deviation from its schedules of rates on file with this Commission, as said deviations appear in a list which was filed with said petition as a part of petitioner's revised schedule of rates, and also permission to make reductions in its schedules of rates as business conditions made such reductions advisable and necessary without first applying to this Commission for the privilege of doing so; and

Whereas this Commission has been unable to make the investigations into deviations from schedules of rates of public utilities which it may hereafter make, and is willing in the mean time to permit existing deviations to continue, if applied for, until the further order of the Commission; and

Whereas under the provisions of section 15 of the Public Utilities Act changes in the rates of public utilities, other than increases, become effective by operation of law upon thirty days' notice to the Commission, unless suspended, without further action of the Commission, and said Commission has the power, for good cause shown, to allow changes on less than thirty days' notice, so that a simple and effective procedure is provided for making reductions in rates; and

Whereas the grant of applicant's prayer for permission to make reductions in its schedules "as business conditions make such reductions advisable and necessary" without first filing such reductions with this Commission would practically nullify said provisions of the Public Utilities Act, and would render possible the creation of discriminations and special privileges in addition to those heretofore existing, and would thus serve largely to defeat one of the main purposes of the Public Utilities Act.

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It is hereby ordered that applicant's petition to continue the deviations as shown on its said revised schedule of rates is hereby granted until the further order of this Commission, and applicant's petition for permission to make reductions in its schedules as business conditions make such reductions advisable and necessary without first filing such reductions with this Commission is hereby denied.

Dated at San Francisco, California, this 29th day of June, 1912.

DECISION NO. 118.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY, AN ELECTRICAL CORPORATION, AND OF FRED B. MECHLING FOR AN ORDER AUTHORIZING THE ASSIGNMENT AND TRANSFER BY SAID FRED B. MECHLING TO THE SAID THE SOUTHERN SIERRAS POWER COMPANY OF A CERTAIN FRANCHISE AND FRANCHISE RIGHTS HERETOFORE GRANTED TO AND NOW HELD BY THE SAID FRED B. MECHLING TO ERECT, CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRICAL SYSTEM, CONSISTING OF POLES, TOWERS, WIRES, CONDUITS AND OTHER NECESSARY AND CONVENIENT APPARATUS FOR TRANSMITTING AND DELIVERING ELECTRIC ENERGY FOR LIGHT, HEAT, POWER AND OTHER PURPOSES WITHIN THE CITY OF SAN JACINTO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

Application No. 115.

Decided June 29, 1912.

REPORT OF THE COMMISSION.

The Southern Sierras Power Company, a corporation, and Fred B. Mechling having filed with this Commission an application under the provisions of section 51 of the Public Utilities Act for an order of this Commission authorizing the assignment and transfer by said Mechling to said the Southern Sierras Power Company of that certain franchise heretofore and on the third day of April, 1912, granted to said Mechling by the city of San Jacinto by Ordinance No. 102, for the erection, construction, operation, and maintenance of an electrical system for the transmission and delivery of electrical energy for light, heat, power and

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other purposes within said city; and said franchise having been secured by said Mechling for said the Southern Sierras Power Company, the owner of the electrical distributing system within said city, with the knowledge of all parties concerned; and the Commission finding that this is a case in which a public hearing need not be held, and that the application should be granted as prayed for,

It is hereby ordered that said application be and the same is hereby granted as prayed for.

Dated at San Francisco, California, this 29th day of June, 1912.

DECISION No. 119.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF SUPERVISORS OF LOS ANGELES COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A PUBLIC HIGHWAY CROSSING AT GRADE OVER THE TRACK OF THE SOUTHERN PACIFIC COMPANY NEAR SAVANNA, IN THE EL MONTE ROAD DISTRICT, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 101.

Decided July 1, 1912.

REPORT OF THE COMMISSION.

Board of Supervisors of Los Angeles County, California, by its clerk, H. J. Lelande, per A. M. McPherron, deputy clerk, having heretofore on June 13, 1912, filed with this Commission its application for permission to construct a public highway at grade across the track of the Southern Pacific Company near the town of Savanna, Los Angeles County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that the Southern Pacific Company agrees to said crossing at grade as prayed for in said application, and as shown by agreement of May 18, 1912, signed by Southern Pacific Company, copy of which is attached to said application; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to the board of supervisors of Los Angeles County, California, to construct a public

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highway crossing at grade across the track of the Southern Pacific Company near the town of Savanna, El Monte Road District, Los Angeles County, California, said public highway being an extension of Gibson Road near said town, and fully shown on a map of said crossing filed with the application, said crossing to be constructed subject to the following conditions:

(1) The expense of grading and constructing the roadbed for the highway up to the track of the Southern Pacific Company, including such drainage culverts as may be necessary, shall be borne by the county of Los Angeles.

(2) The expense of constructing the crossing over the track of the Southern Pacific Company, including all plank, guardrails, and gravel and broken stone, and other character of material necessary to construct said crossing and complete same in a first-class and substantial manner suitable for safe and convenient use by the public, shall be borne by the Southern Pacific Company.

(3) The crossing shall be constructed of a length not less than 24 feet, and with grades of approach not exceeding 8 per cent.

(4) The expense of hereafter maintaining the crossing, together with the approaches on the right of way of the Southern Pacific Company, in a first-class and safe condition for the use of the public, shall be borne by said company.

(5) The agreement of May 18, 1912, between the Southern Pacific Company and the county of Los Angeles, California, relating to the construction of the crossing is approved by the Commission, so far as the same does not conflict with the terms of this order.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demands such action.

Dated at San Francisco, California, this 1st day of July, 1912.

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DECISION NO. 120.

IN THE MATTER OF THE APPLICATION OF THE INLAND NAVIGATION COMPANY FOR AN ORDER AUTHORIZING ISSUE OF STOCK.

Application No. 105.

Decided July 1, 1912.

In addition to its investment in a steamboat, applicant asks for permission to capitalize a contract for the transportation of freight. It must be borne in mind that in fixing the rates and fares which it will charge the public as a common carrier, applicant may reasonably be expected to ask for such rates and fares as will give fair returns upon its investment and, in view of this fact, the Commission cannot consistently permit applicant to capitalize its contracts in the manner asked for.

J. C. Myerstein, for applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Applicant purchased a stern wheel steamer known as the Napa City from the Bank of Napa for nine thousand, seven hundred and fifty dollars ($9,750). The bank had taken the steamer under foreclosure proceedings on a mortgage given to secure a loan, and the time had nearly elapsed that it could hold the boat under the law, so that applicant claims that by reason of the bank being compelled to sell the steamer it was purchased by applicant for less than its real value, which applicant claims is between ten thousand (10,000) dollars and eleven thousand (11,000) dollars. Applicant is a corporation composed of four men, namely, Joseph Palacin, J. J. Thiebaut, A. D. Little, and E. J. Linden, holding equal interest in the corporation.

None of these gentlemen were present at the hearing, being represented by their attorney, Mr. Myerstein, who claimed to have as intimate a knowledge of all of the circumstances and details concerning which the Commission would want information as any one of the incorporators.

Mr. Myerstein testified that he was competent to judge of the value of the boat and that he considered it worth between ten thousand (10,000) dollars and eleven thousand (11,000) dollars. I believe the boat may fairly be considered as worth ten thousand five hundred (10,500) dollars.

In addition to this investment, applicant has secured contracts from the Sperry Flour Company and from the Selby Smelting Works to furnish transportation for the products of those companies, the securi-

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ties of which contracts applicant claims involved considerable time and effort, and upon this investment, to wit, the steamer and the two contracts, applicant asks for an authorization to issue two hundred (200) shares of common stock of the par value of one hundred dollars ($100) per share or a total of twenty thousand dollars ($20,000). The contracts are for one year each.

It must be borne in mind that in fixing the rates and fares which it will charge the public as a common carrier, applicant may reasonably be expected to ask for such rates and fares as will give fair returns upon its investment, and in view of this fact, I am of the opinion that this Commission cannot consistently permit applicant to capitalize its contracts in the manner asked for.

Mr. Myerstein testified that it took Mr. Linden about two months to secure the contracts and make the arrangements for operating the boat. I believe that if we consider their investment for boat and contracts twelve thousand dollars ($12,000), it will be fair both to applicant and to the public, and so hold.

Order will issue accordingly.

ORDER.

Application having been made to the Railroad Commission of the State of California by Inland Navigation Company for an order authorizing the issue of two hundred (200) shares of its capital stock of the par value of one hundred dollars ($100) each, and a hearing having been duly held upon said application, and it appearing to the Commission that the issue of one hundred and twenty (120) shares of said stock having a par value of twelve thousand (12,000) dollars is reasonably required for the acquisition of property and that said purpose is not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered as follows:

(1) Inland Navigation Company is hereby authorized to issue its capital stock to the amount of one hundred and twenty (120) shares having a par value of twelve thousand (12,000) dollars to Joseph Palacin, J. J. Thiebaut, A. D. Little, and E. J. Linden in exchange for property described as follows: that certain stern wheel steamer known as the Napa City.

(2) Inland Navigation Company shall on or before thirty days from the date of this order, make a verified return to this Commission showing the disposition of every share of stock authorized to be issued under this order, and shall make a similar return during each fifty days thereafter until the stock hereby authorized to be issued shall have been fully issued.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this first day of July, 1912.

DECISION No. 121.

IN THE MATTER OF THE APPLICATION OF SCHWARTZ BROS., W. R. GRACE & COMPANY AND VARIOUS OTHER COFFEE IMPORTERS AND BROKERS FOR A REHEARING AS TO THAT PORTION OF THE COMMISSION'S DECISION MAKING ITS FORMER ORDER AS TO RATES AND CHARGES FOR STORING COFFEE RETROACTIVE.

Application No. 125.

Decided July 1, 1912.

Application for a modification of a former order (Application No. 16–25 and 28), with respect to a particular rate ordered merged with an application for a rehearing upon the rates and charges generally prescribed in said order.

C. W. Durbrow, for warehouseman.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

At the time the matter of rates and charges for storing coffee first came before the Commission it was in an informal manner and the meeting was attended and the discussion participated in by warehousemen and the patrons, the coffee importers and brokers.

The larger question of rates and charges for warehouses generally was at that time before the Commission, but the dealers in coffee wanted an earlier decision, so that they might make returns to the people in South America, who consigned the coffee to them.

After a careful investigation at the informal hearing, the Commission decided to permit the schedule of rates and charges presented by the warehousemen to go into effect, and named March 23d as the effective date for such order, that being the effective date of the Public Utilities Act. The influence moving to make the order retroactive to that date is explained as follows: In the fall of 1911 the warehousemen presented a schedule of rates to their patrons, which schedule had received the approval of the chamber of commerce. These rates were

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being charged by the warehousemen, but after the Public Utilities Act became effective the warehousemen were notified that they must charge the rates which were in effect on October 10, 1911, until they had received the approval of this Commission for different rates.

Inasmuch as at the informal hearing the Commission approved of the rates which had been named and used by the warehousemen previous to March 23d, and until they had received instructions from this Commission to restore the rates in effect October 10, 1911, I considered it fair to make the effective date of the order which resulted from the informal conference the same as the effective date of the Public Utilities Act. At the hearing under the present application as to the retroactive feature of the former order, the Commission endeavored to learn from the coffee brokers and importers to what extent settlements had been made with their consignors in South America between March 23d and May 27th when the order resulting from informal conference was issued and made retroactive to March 23d. It was explained to them that this would have an important bearing in the consideration of the retroactive feature of the former order, but there was but one person willing to testify that he had made settlement with his consignor between those dates.

In the mean time the more comprehensive case of rates and charges for warehouses generally had been heard, and a decision rendered putting into effect the schedule of rates and charges named by the warehousemen and approved by the chamber of commerce, as above referred to. Certain patrons of warehouses have asked for a rehearing, and their petition will soon be heard in due form. Under these circumstances, I believe that the question of making the order as to rates and charges on coffee retroactive should be joined with and heard at the same time as the rehearing of the general warehouse case, and I so hold.

An order will issue accordingly.

ORDER.

Whereas as a result of an informal hearing heretofore held on the question of rates and charges to be charged by warehouses for storing and handling coffee, an order was issued approving certain rates and charges for such service, which order was issued May 27th and made retroactive to March 23d; and whereas an application has been filed by certain importers and coffee brokers asking that said order be modified to the extent of its retroactive feature, and whereas a hearing has been had on the larger question of all rates and charges for warehouses, a decision rendered and an application filed for a rehearing, it is hereby ordered that the application for a modification of the former order making the rates and charges on coffee retroactive be joined with and

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heard at the same time as application No. 15, 25, and 28, comprehending a rehearing of the question of rates and charges for warehouses generally.

The above opinion and order are hereby approved and ordered filed as the opinion and order of this Commission.

San Francisco, California, July 1, 1912.

DECISION No. 122.

IN THE MATTER OF THE APPLICATION OF HOLTON POWER COMPANY FOR PERMISSION TO ISSUE FIRST MORTGAGE REFUNDING BONDS OF THE FACE VALUE OF THREE HUNDRED THOUSAND DOLLARS.

Application No. 49.

Decided July 3, 1912.

It is apparent that, exclusive of any possible value of franchises and water rights, there is a reasonable margin of value between the total bonds which will be outstanding, should this request be granted, and the value of the property which will be secured for the payment of these bonds. Applicant has been able to earn its fixed charge, and, in addition, a small profit. Furthermore, the corporation is operating in a new and growing community and it may be reasonably expected that its business will increase. Also, the bonds which are asked to be authorized will replace a floating indebtedness which is drawing a higher rate of interest than will be paid upon the bonds, and the fixed charges of the company will not be materially increased by the authorization. Upon these considerations, *ordered* that the application be granted.

REPORT OF COMMISSION.

EDGERTON, *Commissioner.*

This is an application for an order authorizing the issuance by applicant of $300,000 face value of bonds bearing interest at 6 per cent per annum.

Applicant is a corporation organized for the purpose of generating and distributing electricity to towns and communities in the Imperial Valley, San Diego County, California, and it has been engaged in this business about seven years. In addition thereto, it owns and conducts an ice plant and certain water distributing systems, and also it owns a large block of stock in a railroad operated in said county.

The condition of the capitalization of said company is as follows:

Stock authorized	$1,500,000 00
Stock issued	1,250,000 00
Bonds outstanding	500,000 00
Additional bonds authorized October 1, 1911	1,000,000 00

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Five hundred thousand dollars of the last mentioned bonds are set aside for the purpose of retiring the outstanding bonds and $500,000 are proposed to be used for the purpose of improvements, extensions, etc. Of this latter $500,000, the Commission is now asked to authorize the issuance of $300,000.

The money obtained from the sale of these last mentioned bonds is to be used to pay off a floating indebtedness of $251,153.97, or so much thereof as the money realized will permit. This floating indebtedness represents additions and extensions made to the property, and it is not wholly or in part reasonably chargeable to operating expenses or to income.

The property of the company which will be security for the payment of all of its bonds, and the valuation placed thereon by the company is as follows:

Electric plants, etc.	$520,201 16
Canal	43,996 50
Transmission lines	85,182 44
Meters and transformers	15,312 25
Ice plants and depots	258,732 78
Machine and blacksmith shop	11,537 91
Office building and fixtures	12,925 26
Real estate	178,000 93
Total	$1,125,889 23

Applicant included values on water rights and franchises of $650,000, in addition to the above named property, but these items have been excluded in considering this application. The corporation also owns stock of the Holton Interurban Railway Company valued at $199,500, but this is not included in the property conveyed under the trust deed as security for the payment of bonds issued thereunder.

It is apparent that, exclusive of any possible value of franchises and water rights, there is a reasonable margin of value between the $800,000 bonds which will be outstanding should this request be granted, and the value of the property which will be security for the payment of these bonds. Furthermore, this corporation is operating in a new and growing community, and it may be reasonably expected that in view of the increase in its business in the past, and the fact that there is a steady increase in population in Imperial Valley, where it operates, that its business will increase. Applicant has been able to pay its bonded and other interest charges, and make in addition a small profit, and as the bonds which are asked to be authorized will replace a floating indebtedness which is drawing a higher rate of interest than these bonds, the fixed charges of the company will not be materially increased.

It is asked that the Commission allow these bonds to be sold at not less than 80 per cent of their face value. This is a low price for bonds, and, under ordinary circumstances, the Commission would hesitate

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before assenting thereto; but it appears that because of the breaking of the banks of the Colorado River, some years ago, and the consequent flooding of a part of the Imperial Valley, it has been difficult to persuade investors to loan money on property in this valley, except at large rates of interest and for unusually good returns. Without assenting to the proposition that the Imperial Valley, or any part of it, is in such danger of a recurrence of this flooding that capitalists are justified in charging high rates for money loaned in this territory, I find that conditions are such that in order to raise the contemplated amount of money, applicant may find it necessary to offer these bonds at 80 per cent of their face value.

As the capital stock heretofore issued, it appears by the testimony that the first $500,000 thereof was paid for at the rate of 30 per cent of its face value, and in addition the organizers of the company, who were the purchasers of this stock, brought about the making of profits by the corporation to an extent which practically made this issue of $500,000 of stock represent full value. As to the remaining $750,000 of capital stock which has been issued, it appears that this stock was given, partially at least, as a bonus on the purchase of the $500,000 of bonds, which were paid for at par, but as there is considerable property back of this stock in addition to that covered by bonds, and as this stock was issued years before the going into effect of the Public Utilities Act, it does not appear that, under all the circumstances of this case, the application should be denied because of the fact that part of said stock was originally given as a bonus.

I, therefore, recommend that the application be granted.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Holton Power Company for an order authorizing the issue by said company of $300,000 face value of its first and refunding mortgage gold bonds, dated October 1, 1911, bearing interest at the rate of 6 per cent per annum, payable semiannually on the first day of April and the first day of October of each year,

And a hearing having been duly held, and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the discharge of its obligations, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or income,

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by Holton Power Company of $300,000 face value of first and refunding mortgage gold bonds,

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bearing interest at the rate of 6 per cent per annum, payable semi-annually on the first day of April and the first day of October of each year, and dated October 1, 1911, or so much thereof as may be necessary for the purposes set out herein.

Said bonds to be issued under and in pursuance of the terms of a mortgage and deed of trust, dated October 1, 1911, executed by Holton Power Company to The Southern Trust Company; a copy of which said mortgage and deed of trust is on file with the application herein, upon the following conditions not otherwise:

1. Holton Power Company shall sell the bonds hereby authorized so as to net said company not less than 80 per cent of the face value thereof, plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only: For the discharge of obligations as specified in application, $251,153.97.

3. Said company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

4. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of July, 1912.

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DECISION NO. 123.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE UNDER SECTION 50*a* OF THE PUBLIC UTILITIES ACT THAT THE PRESENT AND FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE AND WILL REQUIRE THE CONSTRUCTION OF TRANSMISSION AND DISTRIBUTION LINES FOR ELECTRIC SERVICE IN THE COUNTIES OF PLUMAS, BUTTE, YUBA, SUTTER, COLUSA, GLENN, YOLO, SOLANO, CONTRA COSTA, ALAMEDA, SACRAMENTO, SAN JOAQUIN AND CALAVERAS AND AN EXTENSION IN AND THROUGH SAID COUNTIES OF THE EXISTING LINES OF SAID CORPORATIONS; AND FOR A PRELIMINARY ORDER UNDER SECTION 50*c* OF SAID ACT DECLARING THAT THE COMMISSION WILL HEREAFTER, UPON APPLICATION THEREFOR, AFTER SAID CORPORATION HAS OBTAINED FRANCHISES AND PERMITS IT CONTEMPLATES SECURING, BUT WHICH HAVE NOT AS YET BEEN GRANTED IT, ISSUE THE NECESSARY CERTIFICATE OR CERTIFICATES THAT THE PRESENT OR FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR WILL REQUIRE THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED BY SAID CONTEMPLATED FRANCHISES AND PERMITS AND DISTRIBUTION LINES AND EQUIPMENT IN SAID COUNTIES.

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Application No. 64.

Decided July 3, 1912.

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The decision in this matter predicated upon the principles laid down by the Commission in the case of *Pacific Gas and Electric Company* vs. *Great Western Power Company*, Case No. 269. The rates proposed to be charged by applicant in its intented territory of operation inquired into. Also its financial condition and the transactions which accompanied the issue of its stock and bonds.

It appears that applicant, immediately prior to the Public Utilities act taking effect, issued a large amount of bonds apparently for inadequate or no consideration upon which interest payment of $600,000 per year can legally be enforced unless the holders of the bonds have, for adequate consideration, waived the payment of interest. The rate paying public has no assurance, as matters now stand, that the money derived from the sale of the bonds will go into the property and that the interest payments will be held down to a reasonable amount. Unless such assurance is given, this Commission has no means of knowing whether or not applicant will be able to furnish service for the rates which it has specified, and whether, accordingly, the public convenience and necessity of the territory through which applicant's lines are to run require or will require the granting of its application.

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When the facts in any particular case show that the utility seeking to enter a territory is so situated financially that there is strong likelihood that it will be unable to render adequate service at reasonable rates, regardless of its desire to do so, the application for certificate of public convenience and necessity will be denied if there is no way of improving its financial condition; or, if a way is opened to it so to change its financial status as to insure its ability to render adequate service at reasonable rates, its application may then be granted, but solely contingent upon its satisfying the requirements of the Commission as to financial condition, because otherwise the public convenience and necessity would not be subserved by the grant of the application.

Held, That the public convenience and necessity do not and will not require the granting of the application unless applicant shall execute an agreement with the present holders of the bonds; that none of said bonds will be disposed of unless application shall first have been made by the owner thereof to this Commission for approval of such sale; said agreement also to provide that the present holders of said bonds and their successors expressly waive the right to collect interest on the bonds without first having secured the consent of the Commission.

Held, That the Commission will not make an order, under section 50c of the Public Utilities Act, declaring that it will issue a certificate of public convenience and necessity when applicant has obtained a franchise which it contemplates securing, unless applicant at the time of such order shall have applied in good faith to the public authorities from which it is necessary to secure such franchise or permit. In this case, however, applicant's application was filed with the Commission before the Commission announced its policy in this regard, and because of this fact such order preliminary to the issue of the certificate is granted.

Goodfellow, Eells & Orrick and *W. H. Orrick*, for Oro Electric Corporation.

Charles P. Cutten, for Pacific Gas and Electric Company.

Chickering & Gregory and *Allan Chickering*, for Western States Gas and Electric Company.

E. Wholey, for Northern California Power Company, Consolidated.

Frank E. Powers, for Vacaville Water and Light Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application of Oro Electric Corporation for a certificate of public convenience and necessity, and for an order that this Commission will hereafter issue its certificate permitting the exercise of rights or privileges under franchises or permits which applicant contemplates securing, but which have not as yet been granted to it.

Applicant was incorporated on March 13, 1911, and under its articles of incorporation has general authority, among other matters, to transact the business of generating, transmitting, and delivering electricity for light or power within the State of California. Applicant has heretofore purchased from Oro Water, Light and Power Company its electrical plant and distributing system serving Oroville and vicinity, and now contemplates constructing a reservoir in Humbug Valley, Plumas

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County, near the confluence of Yellow Creek and the north fork of the Feather River and leading the water thence through a conduit and down a drop of 1,900 feet to a power house to be constructed on the north fork of the Feather River near Belden, on the line of the Western Pacific Railway. Said plant is to be built in units, and is to have an average output of 20,000 kilowatts with a possibility of an increase to 40,000 kilowatts. The application asks that this Commission make its order that the present or future public convenience and necessity require or will require the construction of said plant, and also the construction of transmission and distribution lines and equipment in the counties of Plumas, Butte, Sutter, Colusa, Glenn, Yuba, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin, and Calaveras, under the provisions of section 50*a* of the Public Utilities Act, and also that this Commission make its order that it will hereafter issue a certificate permitting the exercise of rights or privileges under franchises or permits which applicant contemplates securing but which have not as yet been granted in each of said counties.

At the hearing, applicant's counsel defined with greater particularity the territory through which applicant desires to build its transmission and distribution lines as follows: Plumas County, in so far as affects the construction of the plant in and about Humbug Valley, and the construction work along the north fork of the Feather River to Butte County; all of Butte County, except the cities and towns of Chico, Biggs, and Gridley and the territory which applicant is now serving; all of Yuba County, except the city of Marysville; all of Sutter County; all of Colusa County; the southerly half of Glenn County; all of Yolo County; all of Solano County, except the cities and towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo, and Benicia; all of Contra Costa County, except the cities of Richmond and Antioch; all of Alameda County, except the cities of Oakland, Berkeley, and Alameda; all of Sacramento County, except the city of Sacramento; all of San Joaquin County north of the right of way of the Southern Pacific Company extending from Antioch through Oakley, Bixley, Stockton, and Burnham to the easterly end of the county, excluding the cities of Stockton and Lodi; and that portion of Calaveras County which extends from its western boundary south of Mokelumne River to the town of Camanche.

Northern California Power Company Consolidated appeared and was granted leave to make its protest to the granting of the application in so far as affects Colusa County and the southerly half of Glenn County. Pacific Gas and Electric Company appeared and was given leave to file its written answer and protest, in which it denies generally the allegations of the application and alleges that the territory specified in the application is already being fully supplied by it with

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electricity for light, heat and power, with the exception of certain portions thereof which are being adequately and sufficiently supplied by public utilities other than the applicant or said protestant and that applicant intends to duplicate protestant's investment and distribution system to the detriment of the consumers of electricity in said territory and of said protestant. Western States Gas and Electric Company appeared and was given leave to file its written answer and protest, in which it denies that public convenience and necessity will require the granting of said application from a point where the proposed new construction first becomes parallel to the line of the Western Pacific Railway Company and following the line of said proposed new construction to its termination at Camanche in Calaveras County, all the territory on the east side of the proposed new construction down to the point where the same leaves the line of the Western Pacific Railway Company, and also the territory on both sides of said proposed new construction from the point where the same leaves the line of the Western Pacific Railway Company, and also the city of Richmond and its immediate vicinity. Protestant further alleges that protestant in said territory does adequately supply electric current wherever demand exists, with adequate service and at reasonable rates and denies that there is any necessity for such service on the part of any other utility. Vacaville Water and Light Company also appeared and was given leave to file its written answer and protest, in which it alleges that for more than twenty years last past it has been and now is engaged in the business of supplying Vacaville and its inhabitants and the territory surrounding Vacaville for a distance of approximately two miles in all directions and the inhabitants of such territory with electricity for light, heat and power, and denies that the public convenience and necessity will be promoted by the issuance to petitioner of a certificate in so far as said territory is affected.

In rendering my opinion on this application I shall bear in mind the principles laid down by this Commission after mature deliberation in the case of *Pacific Gas and Electric Company* vs. *Great Western Power Company*, Case No. 269, and particularly those portions of the opinion which read as follows:

"It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached a point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any of these conditions is lacking, the public convenience may often be served by allowing competition to come in.

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Only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission or other governmental authorities, to accord to the communities of this State those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

While the evidence in this application shows that certain portions of the territory covered thereby are already served or partially served by existing utilities of like character, it is also shown that the proposed transmission and distribution lines of applicant will tranverse large areas of land which are at present served by no other like utility and that the development of this territory and particularly the cutting up of large tracts of land and the development of intensive cultivation resulting from the application of electric power to the land for the development of water supply will very materially enhance the prosperity of this section of the State. Whenever the Commission finds such a utility knocking at its door it will certainly do all in its power, provided that the utility is honestly and wisely conceived and subject to proper regulation and control in the interest alike of its bondholders and stockholders and of the rate paying public, to assist such utility and thereby to enhance the general prosperity of the State. However, public policy will not be subserved by such encouragement to every utility which may apply to this Commission. Unless such utility is able to render to the public service at reasonable rates and to give satisfactory assurance of honest and prudent management, the action of the Commission in encouraging such utility may possibly result in great economic waste and financial loss. Hence it becomes necessary in each case to inquire into the financial condition of applicant and into its probable ability to serve the public at reasonable rates, both where the intention is to compete with an existing utility or to occupy entirely new territory.

This Commission accordingly called upon the applicant to furnish its proposed schedule of rates which it intends to establish, and to show that with such rates applicant could make a reasonable profit on its investment. Applicant accordingly presented the following schedule of rates for power for pumping and irrigation purposes in the territory to be served: 2¾ cents per kilowatt hour for the first 50 kilowatt hours per installed horsepower per month; 2½ cents per kilo-

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watt hour for the next 50 kilowatt hours per installed horsepower per month; 2 cents per kilowatt hour for the next fifty kilowatt hours per installed horsepower per month; 1¾ cents per kilowatt hour for the next 200 kilowatt hours per installed horsepower per month, with a minimum in any event of $6.00 per year per horsepower installed.

The schedules now in force on the part of the Pacific Gas and Electric Company and Western States Gas and Electric Company, which companies will be applicant's chief competitors if the application is granted, are identical and are as follows: 3 cents per kilowatt hour for the first 1,000 kilowatt hours per month; 2½ cents per kilowatt hour for the next 1,000 kilowatt hours per month; 2 cents per kilowatt hour for all over 2,000 kilowatt hours per month, with a minimum in any event of $6.00 per year per horsepower installed.

The Commission has made a comparison of the rates so in force with those proposed by applicant and finds that for small motors, particularly those of five and ten horsepower, the rates proposed by the applicant, if used by consumers, will result in the payment of a considerably smaller charge than the existing rates, but that for fifty horsepower motors and over, the charges of the existing companies will be less than those of applicant. The proposed rates of the Northern California Power Company, Consolidated, are slightly lower than those of the Pacific Gas and Electric Company and the Western States Gas and Electric Company, but for the small motors the rates of applicant are somewhat less than those of the Northern California Power Company, Consolidated. The announced purpose of applicant is to induce the users to install small motors wherever possible and to use power as continuously as may be. Applicant has announced that it would offer the same rate to all consumers, whether near or at some distance from its main lines, and that it will serve all sections of territory as to which it produced testimony with a liberal policy as to extensions.

As to alternative schedule which applicant proposed to present to its customers and to give to them in case they do not desire to take the schedule hereinbefore set out, it gives the following schedule: 2¾ cents for the first 1000 kilowatt hours used per month; 2½ cents for the next 1000 kilowatt hours used per month; 1¾ cents for all over 2000 kilowatt hours used per month, with a minimum of $6.00 per year per horsepower installed.

Applicant did not produce a rate for lighting.

The Commission also made a careful investigation into applicant's financial condition and into the transaction which accompanied the issue of its stocks and bonds. My conclusions in this respect will be given after a statement of my findings as to the condition in each of the counties through which applicant seeks permission to build its trans-

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mission and distribution lines. It should be distinctly understood at the outset, however, that wherever in the following portions of this opinion I find that applicant's petition should be granted as to any specific territory, or that the present or future public convenience and necessity require or will require the construction prayed for, each of such findings is made subject to the express condition precedent that the conditions which I shall specify with reference to applicant's financial affairs shall first have been complied with as hereinafter specified. I find that unless such conditions are complied with, the present or future public convenience and necessity will not and do not require the construction prayed for, or any part thereof, and that applicant's petition should in that event be denied in its entirety.

As to Plumas County, applicant seeks permission to construct its plant in and about Humbug Valley, and to perform the necessary construction work thence down the north fork of the Feather River to the Butte County line. I recommend that the application be granted as to this county.

As to Butte County, applicant asks for this Commission's certificate for the entire county, except the cities and towns of Chico, Biggs, and Gridley and those portions of the county which are at present being served by applicant, being chiefly the city of Oroville and surrounding territory. The distributing systems in the towns of Biggs and Gridley are owned by those respective municipalities, which buy their power from the Pacific Gas and Electric Company. With the exception of the electrical energy supplied to the cities or towns of Chico, Biggs, and Gridley and that supplied by the Pacific Gas and Electric Company to a few dredgers in the vicinity of Oroville, the county is at present supplied with no electrical energy other than that furnished by applicant in and about Oroville. The evidence shows that there are very considerable possibilities for development in the way of both light and power in this county and that there is a considerable present unsupplied demand. I recommend that the application be granted as to Butte County as prayed for. In this connection I would draw attention to the fact that the lighting rate in the city of Oroville is at present 10 cents per kilowatt hour, with an additional 2 cents in case the bill is not paid by the fifteenth day of the month. In response to an inquiry from the Commission, applicant gave assurance that in case its application is granted, it will at once reduce this rate.

As to Yuba County, applicant asks for this Commission's certificate for the entire county, except the city of Marysville, which is served by the Pacific Gas and Electric Company. I find that while the Pacific Gas and Electric Company has very recently made a few extensions to the north and to the south of the city, and is serving a limited territory

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in the vicinity of Wheatland, the county as a whole, outside of the city of Marysville, is supplied with almost no electrical energy, with at least some demand and considerable opportunity for development. I recommend that the application be granted as to Yuba County as prayed for.

As to Sutter County, applicant asks for this Commission's certificate for the entire county. The Pacific Gas and Electric Company at present serves a district in the vicinity of Yuba City and also has a distribution line westerly to the city of Meridian, but most of the remaining portions of the county are at present unsupplied. There is considerable evidence before the Commission as to a demand for electrical energy, particularly in the northern portion of the county. I recommend that the application be granted as to the entire county as prayed for.

As to Colusa County, applicant asks for this Commission's certificate for the entire county. The Pacific Gas and Electric Company at present supplies the city of Colusa and has put in a few motors along the Sacramento River north and south of Colusa, and also a pump in Reclamation District No. 108. Mr. Oscar Robinson, the mayor of Colusa, testified that the rates of the Pacific Gas and Electric Company within the town of Colusa are reasonable, that the service of the company within the town is satisfactory, and that its policy as to extensions is reasonable, and there is no satisfactory evidence to the contrary. Under the principles announced in the case of *Pacific Gas and Electric Company* vs. *Great Western Power Company*, I recommend that the application be denied, without prejudice, as to the town of Colusa.

The Northern California Power Company, Consolidated, has within the last year built its transmission line through the towns of Princeton, Maxwell, Williams and Arbuckle to College City, which is the extreme southern point served by this company. This company's total transmission lines in the county of Colusa amount to between 45 and 50 miles, and it has only between 15 and 20 miles of distribution lines within the county, of which only 7 miles are outside of the towns hereinbefore specified. Applicant presented no evidence whatsoever with reference to the towns served by the Northern California Power Company, Consolidated. Under the principles announced in the case of *Pacific Gas and Electric Company* vs. *Great Western Power Company, supra*, I accordingly recommend that the application be denied, without prejudice, as to these towns. On the other hand, there is considerable evidence with reference to a demand for power and light outside of these towns, and I accordingly recommend that the application be granted as to all of Colusa County, except the town of Colusa and the towns of Princeton, Maxwell, Williams, Arbuckle, and College City.

As to Glenn County, applicant asks this Commission's certificate for

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the southerly half of the county. The only power at present being supplied in this territory is supplied by the Northern California Power Company, Consolidated, to the town of Willows, with possibly a few customers within a mile or two of the town. There is no evidence with reference to the town of Willows itself. I find that there is some demand for power in the territory affected outside of the town of Willows, with some considerable opportunity for development, and accordingly recommend that the application as to this county be granted as prayed for, except as to the town of Willows. As stated in the case of *Pacific Gas and Electric Company* vs. *Great Western Power Company*, *supra*, the burden of proof is upon applicant to make out a case of public convenience and necessity, and if applicant fails to present evidence with reference to a territory which is already served by an existing utility and as to which that utility enters its protest, the application must be denied as to such territory.

As to Yolo County, applicant asks for this Commission's certificate for the entire county. The Pacific Gas and Electric Company is at present serving the city of Woodland and a limited territory to the south and east thereof, but the entire remaining portion of the county is without any electrical service whatsoever. The testimony shows great possibilities for power development in this county, with some considerable demand at present. Apart from the city of Woodland, I recommend that the application be granted as prayed for.

As to the town of Woodland, there is a direct conflict in the evidence. Each side presented a number of apparently equally reliable witnesses, who testified to diametrically opposing conditions, and neither counsel was able to break down the testimony of the witnesses presented by the other side. J. O. Maxwell, the mayor of Woodland, W. F. Mixon, editor of the Woodland *Mail*, and other responsible parties testified to a lack of power in the city, causing dimness in the lights, particularly between the hours of six and ten or eleven o'clock in the evening. On the other hand, R. H. Beamer, ex-mayor of the town, Fred S. Snavely, the fire chief, and others, testified that the service was entirely satisfactory, and ex-Superior Judge E. E. Gaddis wrote to the Commission a letter to this same effect. The rate for lighting at the time of the filing of the application was 10 cents per kilowatt hour. While this rate has now been reduced to 8 cents, applicant cannot well take advantage of the higher rate at the time of the filing of the application for the reason that applicant has itself presented no lighting rate. In view of the direct conflict between the testimony of equally reliable parties, I find myself unable to make a recommendation at present with reference to the town of Woodland. I accordingly recommend that no action be taken at present on the application with reference to this town, but that applicant be

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permitted to appear again before the Commission at any time after three months from the date of this order, at which time the Commission will take such further testimony as may be presented on both sides of the question and will then reach its decision.

As to Solano County, applicant asks for this Commission's certificate as to the entire county, except the cities or towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo, and Benicia. As already stated, the Vacaville Water and Light Company has filed its protest as to the city of Vacaville and the territory within a radius of two miles from the city. Applicant having introduced no evidence as to this territory, I recommend that the application be denied, without prejudice, as to the territory specified in the protest of the Vacaville Water and Light Company. With reference to the remaining portions of the county covered by the application, there is considerable evidence as to a present demand for further power, and I accordingly recommend that the application be granted as prayed for, excluding the cities and towns specified by applicant, with the addition that the application be denied as to the territory within a radius of two miles of the city of Vacaville.

As to Contra Costa County, applicant asks for this Commission's certificate for the entire county, except the cities of Antioch and Richmond. The city of Richmond and the immediate vicinity thereof are being supplied by the Pacific Gas and Electric Company and the Western States Gas and Electric Company. The Pacific Gas and Electric Company and the Great Western Power Company run their lines through the northern portion of the county and the Pacific Gas and Electric Company has recently made extension in the San Ramon Valley to Danville in the southern portion of the county. There is some evidence with reference to a demand for additional power in that portion of the county which lies east of a north and south line running immediately east of the town of Martinez. There is no evidence as to a present demand for additional power west of said line. There is evidence that the bay front between Richmond and Antioch offers exceptional opportunities for factory sites, but no evidence that there is a present demand for electrical energy for this territory in addition to that which the existing utilities are supplying. In my judgment certificates for public convenience and necessity should not be granted as to territory in which there is no present demand for additional service, and which territory is being supplied in so far as the present demand is concerned by utilities which appear in opposition to the application. I accordingly recommend that the application be granted as prayed for as to that portion of Contra Costa County which lies east of said north and south line, running immediately east of the town of Martinez, and that the application be denied, without prejudice, as to the remaining portion of said county.

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As to Alameda County, applicant asks for this Commission's certificate for the entire county, except the cities of Oakland, Berkeley, and Alameda. As applicant introduced no evidence as to the present unsupplied demand for electrical energy in this county, and as the application is contested by the Pacific Gas and Electric Company, I recommend that the application be denied, without prejudice, as to this county.

As to Sacramento County, applicant asks for this Commission's certificate for the entire county, except the city of Sacramento. The Pacific Gas and Electric Company at present serves the city of Sacramento and a portion of the county lying easterly thereof along the south bank of the American River. The Great Western Power Company also serves the city of Sacramento. The Western States Gas and Electric Company has its lines in the territory south of the city of Sacramento to the southern line of the county, and also northwesterly from said city southerly from the American River toward Folsom.

The territory served by the Western States Gas and Electric Company includes the towns of Florin, Sheldon, Elk Grove, and Galt. There is considerable evidence that this company has failed in its duty to the public as to all of this territory, and particularly as to the town of Elk Grove, where the conditions are very bad. Testimony shows that there is so little power at Elk Grove that the water works are at times unable to pump water for use by the inhabitants, and that there is often so little power that persons having engines must stop them for fear of burning out their motors. Western States Gas and Electric Company frankly admitted that its service in this district had not been satisfactory. The company is now taking steps to improve the service, but as it had not satisfactorily performed its duty to the public at the time the application was filed, the application should be granted with reference to the territory in which this company has its lines. There is no evidence as to any territory in Sacramento County north of the southerly boundary of the city of Sacramento. I recommend that the application be granted as to all of Sacramento County lying southerly of an east and west line running immediately south of the city of Sacramento and that it be denied, without prejudice, as to the remaining portion of the county.

As to San Joaquin County, applicant asks for this Commission's certificate for the entire county north of the right of way of the Southern Pacific Company, extending from a point east of Bixler through Stockton and Burnham to the easterly boundary line of the county, except the city of Stockton and the city of Lodi, which has its own municipal distributing plant. The Pacific Gas and Electric Company at present serves what is known as the "Island Country," lying in the north-

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western portion of the county, and also some territory in the vicinity of Woodbridge, lying northwest of Lodi. The Western States Gas and Electric Company serves Lodi and adjacent territory, particularly to the north and east of the city. Several witnesses testified that the island country is at present being adequately served at reasonable rates by the Pacific Gas and Electric Company, and that there is no complaint concerning this territory and no need for a new utility supplying electrical energy. With reference to the territory supplied by the Western States Gas and Electric Company, the evidence shows that this company has until the beginning of this year been remiss in its duty to the public, but that under the new management it is adopting an active, energetic policy with reference to certain of the territory in the neighborhood of Lodi. The company has reduced its rates for power in this territory, has supplied all persons who have asked for electrical energy and has, at its own expense, built the necessary extensions. What I have just said applies particularly to the territory lying east of a north and south line running through the west boundary of the town of Lodi to the easterly boundary of the town of Lockeford, and included between two parallel east and west lines of which the one runs one mile south from Lodi and the other four miles north thereof. This district does not include the district from Lockeford east to Clements, in which district there is considerable demand for power which has not been met by the Western States Gas and Electric Company. This company, however, is now constructing a line east from Lockeford to Clements. In view of the steps which the Western States Gas and Electric Company is taking with reference to the rectangular territory which I have heretofore described, I recommend that the application be denied, without prejudice, as to that territory and also as to the island territory, which will be more particularly described in the order. As to the remaining portions of that portion of the county which is covered by the application, there is considerable evidence that there are great opportunities in this county for the development of intensive cultivation and a considerable present demand for power. I accordingly recommend that the application be granted as prayed for, except as to the island country and the territory adjacent to Lodi as hereinbefore described, as to which two districts the application should be denied, without prejudice.

As to Calaveras County, applicant asks for this Commission's certificate for the territory lying immediately east of the westerly boundary line of the town of Camanche, where Oro Water, Light and Power Company has dredging properties which it desires to develop. There is some evidence as to need for additional power in this territory, and I recommend that the application be granted.

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Wherever in the foregoing portions of this opinion I find that the application should be granted I find, as a fact, that the public convenience and necessity require and will require the construction as prayed for, but only on the express conditions precedent hereinafter and in the order outlined. There may well be a demand for power in a certain locality; but the public convenience and necessity is not necessarily dependent upon any given utility to supply the need. Unless reasonable assurance is given that an applicant's fixed charges, as well as its operating expense, will not be excessive, and that the moneys derived from the sale of its securities go into the property and not into the hands of promoters or outside parties, and that the utility will be honestly and prudently managed, it may become this Commission's duty to deny the application and thereafter to grant its permission to some other utility which can and does measure up to the State's express public policy in these respects. This brings me to a consideration of applicant's financial condition.

The authorized capital stock of Oro Electric Corporation is 100,000 shares having the par value of $100 each, making a total of $10,000,000, of which $6,500,000 is common and $3,500,000 preferred. At or about the time of its incorporation this entire capital stock was issued. As testified to by President J. W. Goodwin, this stock was issued for the property in Humbug Valley, for which a price somewhat in excess of $500,000 was paid, and for the stock of the Oro Water, Light and Power Company, which had a selling value of about $3,500,000.

The total authorized bond issue is $10,000,000. The first draft of the proposed Public Utilities Act was prepared in October, 1911, and copies were sent out during the early part of November, 1911, to the leading public service corporation lawyers of the State for examination and suggestions. Public hearings were held and largely attended in the early part of November. The bill was introduced in both houses of the legislature a few days before the end of November, 1911. As testified to frankly by President Goodwin, it was considered desirable by his corporation to issue the bonds before the Public Utilities Act should become effective, and the attorneys of his corporation accordingly devised a method by which the entire issue should be disposed of before the effective date of the act. The corporation accordingly proceeded under the plan so devised to issue its bonds as follows: $6,050,000 thereof were issued through Goodwin & Holton as intermediates to the Oro Development Company, a construction company which was incorporated on November 23, 1911, for the purpose of constructing the Oro Electric Corporation's plant and system. The stockholders of the Oro Development Company were the same as the stockholders of the Oro Electric Corporation and each stockholder held the same propor-

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tion of stock in each of the two corporations. The $6,050,000 of bonds were issued to the Development Company for its agreement to build the plant and system and the entire consideration was paid before the Development Company did any work whatsoever. An additional $2,450,000 of bonds were delivered by the Oro Electric Corporation to the Oro Water, Light and Power Company, which was controlled by the same persons, in return for the latter company's guarantee that the principal and interest of the Oro Electric Corporation's bonds would be paid. The remaining $1,500,000 of bonds were issued to Oro Water, Light and Power Company in return for two certain dam sites which had been leased on November 1, 1911, by Oro Water, Light and Power Company to Oro Electric Corporation, with an option to purchase them. In this way all of the authorized bonds of the corporation were issued early in December before the Public Utilities Act finally passed. As the bonds bear interest at 6 per cent, the issuing corporation thus obligated itself to pay $600,000 in interest each year on its bond issue before the commencement by the Development Company of the construction of the plant. The Oro Development Company and the Oro Water, Light and Power Company accordingly agreed that they would waive their right to collect this interest on at least a portion of the bonds until a portion of the plant had actually been constructed. On May 8, 1912, Oro Water, Light and Power Company, and Oro Development Company, which two companies together then held $9,500,000 of applicant's bonds, $500,000 of bonds having in the mean time been sold to the public, entered into an agreement and declaration of trust under which the Oro Development Company deposited with the First Federal Trust Company of San Francisco $3,050,000 of said bonds and the Oro Water, Light and Power Company deposited $3,450,000 of said bonds for the purpose of securing the payment of principal and interest on the $500,000 of bonds which had been sold and on $3,000,000 additional bonds which the Oro Development Company withheld for sale to the public. The bonds so deposited are to be issued only as the work progresses, but the $3,000,000 of bonds held by the Oro Development Company and intended to be sold to the public, are not subject to the agreement. The agreement provides that no interest shall be paid upon the bonds in possession of the trustee until interest in full has been paid upon the 3,500 bonds sold and proposed to be sold, but the Oro Development Company and the Oro Water, Light and Power Company have, of course, the legal right to collect the interest on the bonds which they hold unless they have for sufficient consideration waived that right, and there is nothing in the agreement to prevent the payment of interest to them on their bonds after interest has been paid on the bonds outstanding in the hands of the public.

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Without pausing to comment on the length to which the Oro Electric Corporation went on the advice of counsel to issue this $10,000,000 of bonds before the Public Utilities Act should become effective, I would draw attention simply to the fact that the Oro Electric Corporation issued $6,050,000 of its bonds to itself in the form of a construction company in return for the simple agreement to construct its plant and system, and that it issued $2,450,000 of bonds to itself in the form of the Oro Water, Light and Power Company in return for its guarantee of its own bonds. I would draw attention further to the fact that on the bonds as outstanding interest payments of $600,000 per year can legally be enforced unless the holders of the bonds have for adequate consideration waived the payment of the interest. The rate paying public has no assurance as matters now stand that the money derived from the sale of the bonds will go into the property and that the interest payments will be held down to a reasonable amount. Unless such assurance is given, this Commission has no means of knowing whether or not applicant will be able to furnish its service for the rates which it has specified and whether accordingly the public convenience and necessity of the territory through which applicant's lines are to run require or will require the granting of its application.

It should be plainly stated that in taking this position, this Commission disavows any intention to try by indirection to exercise control over any securities lawfully issued prior to the effective date of the Public Utilities Act. It is merely announced as a principle, that when the facts in any particular case show that the utility seeking to enter a territory is so situated financially that there is strong likelihood that it will be unable to render adequate service at reasonable rates, regardless of its desire to do so, its application for certificate of public convenience and necessity will be denied if there is no way of improving its financial condition; or, if a way is open to it so to change its financial status as to insure its ability to render adequate service at reasonable rates, its application may then be granted, but solely contingent upon its satisfying the requirements of the Commission as to financial condition, because otherwise the public convenience and necessity would not be subserved by the grant of the application. I find that it will be necessary for the applicant herein to take the steps hereinafter indicated before it can place itself in such a position that this Commission can find that the present or future public convenience or necessity require, or will require, the granting of its application in whole or in any part. If the utility does not take such steps the public convenience and necessity not only will not be served by the applicant's proposed construction work, but on the contrary, inevitably will be injured thereby.

I accordingly find, as a fact, that the public convenience and neces-

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sity do not and will not require the granting of the application except upon the following express condition precedent:

Applicant shall file with this Commission a written agreement between Oro Electric Corporation, Oro Development Company and Oro Water, Light and Power Company, duly authorized by the board of directors of each of said respective companies, and in form satisfactory to this Commission, providing that no bond of Oro Electric Corporation which was on June 27, 1912, held or owned by Oro Water, Light and Power Company or Oro Development Company, whether on deposit with the First Federal Trust Company, or otherwise, shall henceforth be transferred, mortgaged, pledged or otherwise disposed of, unless application shall first have been made by the owner thereof to this Commission in the form and manner prescribed by section 52 of the Public Utilities Act and by the rules of practice and procedure of this Commission in the case of issues of bonds by public utilities, and unless this Commission shall first have made its order authorizing the transfer, mortgage, pledge or other disposition of said bond under such conditions and terms as the Commission may prescribe. Also providing, for adequate consideration in said agreement expressed, that Oro Water, Light and Power Company and Oro Development Company, for themselves, their successors, assigns and transferees, expressly waive the right to claim or collect any interest on any of said bonds of Oro Electric Corporation without first having secured an order of this Commission giving its consent, which consent the Commission may refuse or grant, either conditionally or unconditionally, and also providing that in case of breach by any party to said agreement of any provision thereof, the Commission shall have the right without further proceeding to revoke this order and each and every portion thereof.

Applicant has not as yet made application for franchises to any of the counties or incorporated cities or towns through which it desires to construct its transmission or distribution lines. As this Commission has heretofore held in the case of *Pacific Gas and Electric Company* vs. *Great Western Power Company*, *supra*, it will not, except under the most unusual circumstances, make an order under section 50c of the Public Utilities act, unless applicant shall at the time of such order have applied in good faith to the public authorities from which it is necessary to secure said franchise or permit. In this case, however, applicant's application was filed with this Commission before the Commission announced its policy in this regard. I accordingly recommend that because of this fact, the Commission make its order on this application to the effect that it will hereafter upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the

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public utility has obtained the contemplated franchise or permit, said order to be conditioned upon the compliance by applicant with the express conditions precedent hereinbefore set out with reference to its financial affairs. I submit herewith the following form of order:

ORDER.

Oro Electric Corporation having heretofore filed with this Commission its application for a certificate under section 50(*a*) of the Public Utilities Act that the present and future public convenience and necessity require and will require the construction of a reservoir and power plant with the necessary conduits and appurtenances in the county of Plumas, and of transmission and distribution lines for electric service in the counties of Plumas, Butte, Yuba, Sutter, Colusa, Glenn, Yolo, Solano, Contra Costa, Alameda, San Joaquin, Sacramento, and Calaveras, and for a preliminary order under section 50(*c*) of said act declaring that this Commission will hereafter, upon application therefor, after said corporation has obtained franchises and permits it contemplates securing, but which have not as yet been granted to it, issue the necessary certificate or certificates that the present or future public convenience and necessity require or will require the exercise of the rights and privileges granted by said contemplated franchises and permits to construct, maintain, and operate transmission and distribution lines and equipment in said counties, and Pacific Gas and Electric Company, Western States Gas and Electric Company, Northern California Power Company, Consolidated, and Vacaville Water and Light Company having asked for and been granted permission to protest against the granting of said application, and notice of the hearing of said application having been published as required by this Commission, and a public hearing having been held on said application,

The Commission hereby finds as a fact that if applicant shall have complied with the conditions precedent hereinafter in this order specified, but not otherwise, the present and future public convenience and necessity require and will require—

(*a*) The granting of the application of Oro Electric Corporation, under the provisions of section 50(*a*) of the Public Utilities Act, as to the construction of its reservoir and power plant with the necessary conduits and appurtenances in the county of Plumas, and of transmission and distribution lines for electric service in the following territory:

(1) All of Butte County, except the cities and towns of Chico, Biggs, and Gridley and those portions of the county which are at present being served by applicant;

(2) All of Yuba County, except the city of Marysville;

(3) All of Sutter County;

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(4) All of Colusa County, except the cities and towns of Colusa, Princeton, Maxwell, Williams, and Arbuckle;

(5) All of the southerly half of Glenn County, except the town of Willows;

(6) All of Yolo County, except the town of Woodland, as to which the application is held in abeyance;

(7) All of Solano County, except the cities or towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo, and Benicia, and a district having a radius of two miles outside the town of Vacaville;

(8) All of Contra Costa County lying east of a north and south line running immediately east of the city of Martinez, except the city of Antioch;

(9) All of Sacramento County lying southerly of an east and west line running immediately south of the city of Sacramento;

(10) All of San Joaquin County north of the right of way of the Southern Pacific Company extending from a point east of Bixler through Stockton and Burnham to the easterly boundary line of the county, except the city of Stockton, the rectangular district surrounding Lodi, as hereinafter more particularly described, and the island territory, as hereinafter more particularly described; and

(11) That portion of Calaveras County which lies between the westerly boundary line of the county and the town of Camanche; and

(*b*) The granting of the application of Oro Electric Corporation under the provisions of section 50(*c*) of the Public Utilities Act, referring to the approval of franchises as hereinafter in this order specified; and

The Commission hereby finds as a fact that the applicant has failed to make out its case as to the remaining territory specified in its application; and,

Basing its conclusions on the foregoing findings of fact and on the further findings and statements specified in the opinion which precedes this order,

It is hereby ordered as follows:

1. Subject to the express conditions precedent hereinafter specified, the application of Oro Electric Corporation for a certificate under the provisions of section 50(*a*) of the Public Utilities Act, that the present or future public convenience and necessity require or will require the construction specified in its application is hereby granted as to the construction of its reservoir and power plant with the necessary conduits and appurtenances in the county of Plumas, and of transmission and distribution lines for electric service in the following territory:

(1) All of Butte County, except the cities and towns of Chico, Biggs, and Gridley, and those portions of the county which are at present being served by applicant;

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(2) All of Yuba County, except the city of Marysville;

(3) All of Sutter County;

(4) All of Colusa County, except the cities and towns of Colusa, Princeton, Maxwell, Williams, and Arbuckle;

(5) All of the southerly half of Glenn County, except the town of Willows;

(6) All of Yolo County, except the town of Woodland, as to which the application is held in abeyance.

(7) All of Solano County, except the cities and towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo, and Benicia, and a district having a radius of two miles outside of the town of Vacaville.

(8) All of Contra Costa County lying east of a north and south line running immediately east of the city of Martinez, except the city of Antioch;

(9) All of Sacramento County lying southerly of an east and west line running immediately south of the city of Sacramento;

(10) All of San Joaquin County lying north of the right of way of the Southern Pacific Company extending from a point east of Bixler through Stockton and Burnham to the easterly boundary of the county, except the city of Stockton; the island country, more particularly described as a strip of territory seven miles wide bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two thirds of the distance on the westerly boundary; and a rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city;

(11) That portion of Calaveras County which lies between the westerly boundary line of the county and the town of Camanche.

2. The application of Oro Electric Corporation for such certificate is hereby denied, without prejudice as to a further application, as to the cities or towns of Colusa, Princeton, Maxwell, Williams, Arbuckle, College City, and Willows; a district within a radius of two miles from Vacaville; that portion of Contra Costa County which lies west of a north and south line running immediately east of the city of Martinez; Alameda County; that portion of Sacramento County which lies north of an east and west line running immediately south of the city of Sacramento; that portion of San Joaquin County which is known as the island country, as hereinbefore described; and that rectangular portion of San Joaquin County which has hereinbefore been described as surrounding the city of Lodi.

3. The application of Oro Electric Corporation as to the town of Woodland is held in abeyance, with permission to applicant to appear

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again before the Commission at any time after three months from the date of this order.

4. Subject to the express conditions precedent hereinafter specified, the application of Oro Electric Corporation, under the provisions of section 50 (c) of the Public Utilities act for an order declaring that this Commission will hereafter, upon application, issue a certificate that public convenience and necessity require or will require the exercise of rights or privileges under franchises or permits not now, but hereafter to be secured from the various counties and incorporated cities and towns covered by the application is hereby granted in so far as said rights or privileges are to be exercised in the territory, covered by paragraph (1) of this order, and denied, without prejudice, as to the remaining portions of the territory covered by the application.

5. Each portion of this order in which applicant's prayer is granted in whole or in part is subject to the express condition precedent that applicant shall first have filed with this Commission a written agreement between Oro Electric Corporation, Oro Water, Light and Power Company and Oro Development Company, duly authorized by the board of directors of each of said corporations, and in form satisfactory to this Commission, providing that no bond of Oro Electric Corporation which was on June 27, 1912, held or owned by Oro Water, Light and Power Company or Oro Development Company, whether on deposit with the First Federal Trust Company or otherwise, shall henceforth be transferred, mortgaged, pledged, or otherwise disposed of, unless application shall first have been made by the owner thereof to this Commission in the form and manner prescribed by section 52 of the Public Utilities Act and by the Rules of Practice and Procedure of this Commission in the case of issues of bonds by public utilities, and unless this Commission shall have made its order authorizing the transfer, mortgage, pledge, or other disposition of said bond under such conditions and terms as the Commission may prescribe; also providing for adequate consideration in said agreement expressed, that Oro Water, Light and Power Company and Oro Development Company, for themselves, their successors, assigns and transferees, expressly waive the right to claim or collect any interest on any of said bonds of Oro Electric Corporation without having first secured an order of this Commission giving its consent, which consent said Commission may refuse or grant, either conditionally or unconditionally; and also providing that in case of breach by any party to said agreement of any provision thereof, the Commission shall have the right without further proceedings to revoke this order and each and every portion thereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 3d day of July, 1912.

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DECISION NO. 124.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR A CERTIFICATE THAT THE PRESENT OR FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR WILL REQUIRE THE CONSTRUCTION OF TWO NEW HYDROELECTRIC PLANTS WITH RESERVOIRS, DAMS, CONDUITS, DITCHES, FLUMES AND APPURTENANCES IN AND NEAR BEAR RIVER, PLACER COUNTY, AND THE CONSTRUCTION OF AN ELECTRICAL TRANSMISSION LINE FROM SAID PLANTS THROUGH THE COUNTIES OF PLACER, NEVADA, YUBA, SUTTER, YOLO, AND SOLANO, TO A POINT IN SOLANO COUNTY, OPPOSITE CROCKETT, IN CONTRA COSTA COUNTY.

Application No. 69.

Decided July 3, 1912.

Held, That public convenience and necessity will be subserved by the granting of the application as prayed for and as amended at the hearing.

Charles P. Cutten, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This application, as filed, asked for a certificate from this Commission that the present or future public convenience and necessity require or will require the construction of a line for the transmission of electricity from the two hydroelectric plants which applicant intends to construct on Bear River in Placer County, through the counties of Placer, Nevada, Yuba, Sutter, Yolo, and Solano to applicant's North Tower station in Solano County, opposite Crockett, in Contra Costa County. Upon the hearing, applicant was permitted to amend its application so as to ask also for permission to construct the two new hydroelectric plants, with reservoirs, dams, conduits, ditches, flumes and appurtenances on Bear River, which were not covered by the application in its original form.

Applicant intends to construct on the South Yuba River a concrete dam 300 feet high, so as to impound some 3,500,000,000 cubic feet of water. This water will then be led through tunnels and open canals for a distance of some eight miles to a forebay or reservoir, whence the water will be conducted through a pipe line having a length of some 8,000 feet with a vertical head of 1,350 feet to the applicant's proposed power house on Bear River, at a point northerly from Towle, in Placer County. It is proposed at present to install four 10,000 kilowatt gen-

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erators and at some time in the future to increase the output to about 100,000 kilowatts. From the power house the electrical energy will be conveyed through said transmission line to applicant's substation at Cordelia or at North Tower, the North Tower substation being the load center of applicant's system. Twenty thousand kilowatts will take the place of an equivalent amount of electrical energy which is now being purchased from Great Western Power Company under a contract which will expire in about one and one half years and the remaining 20,000 kilowatts of the first installation will be utilized to take care of applicant's growing business throughout northern and central California. The proposed transmission line will be double circuit steel tower construction, with about seven towers per mile. Applicant does not at present ask for permission to distribute from its proposed transmission line.

The cost of the first power house installation with a 40,000 kilowatt capacity and the transmission lines will be in the neighborhood of $5,000,000. Applicant in 1911 arranged a general financial plan under which the work as to which application is now made, together with other work, will be financed. It will probably be necessary for applicant to apply to this Commission for permission to issue a portion of the stocks and bonds comprehended in said plan to secure a portion of the funds necessary to carry out the project now applied for.

Applicant has by itself or its predecessors in interest secured all the franchises necessary in connection with the subject-matter of its application.

I find that public convenience and necessity will be subserved by the granting of the application and recommend that it be granted as prayed for as amended at the hearing. I submit herewith an order as follows:

ORDER.

Pacific Gas and Electric Company having filed with this Commission its application for a certificate that public convenience and necessity require or will require the construction of two new hydroelectric plants, with reservoirs, dams, conduits, ditches, flumes and appurtenances on and near Bear River, Placer County, and the construction of an electrical transmission line from said plants through the counties of Placer, Nevada, Yuba, Sutter, Yolo, and Solano, to a point in Solano County opposite Crockett, in Contra Costa County, and notice of the hearing of said application having been published as required by this Commission, and a public hearing having been held on said application, and the Commission finding as a fact that the present and future public convenience and necessity require or will require such construction,

It is hereby ordered that said application for such construction be and the same is hereby granted.

Dated at San Francisco, California, this 3d day of July, 1912.

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DECISION NO. 125.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A TEAM TRACK ACROSS TYLER STREET IN THE TOWN OF MONTE, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 128.

Decided July 3, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore filed with this Commission its application for permission to construct at grade a team track as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its team track at grade across Tyler street in the town of Monte, Los Angeles County, California, beginning at a point about one hundred and thirty-eight (138) feet east of the center line of Tyler street and on the south side of the main line of the railroad of said company, thence extending westerly and crossing Tyler street at a point about forty-four (44) feet south of the center of said main line, and thence extending westerly in a general direction parallel with said main line to a connection therewith at the west end of the station grounds of said company, subject to the following conditions:

(1) The entire expense of constructing said crossing shall be borne by the said company.

(2) The said company shall hereafter maintain said crossing in a good and first-class condition for the safe and convenient use of the public.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 3d day of July, 1912.

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DECISION NO. 126.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO AND WOODLAND RAILROAD COMPANY, FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE OVER THE TRACKS OF THE SOUTHERN PACIFIC COMPANY, IN THE CITY OF WOODLAND, YOLO COUNTY, CALIFORNIA.

Application No. 59.

Decided July 6, 1912.

T. T. C. Gregory, for applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Sacramento and Woodland Railroad Company having heretofore filed with this Commission its application for permission to construct its track at grade across the tracks of the Southern Pacific Company at the east end of Main street in the city of Woodland, Yolo County, California, and a public hearing having been held on said application before this Commission in the said city of Woodland on the thirteenth day of June, 1912; and it appearing from the testimony taken at the said hearing and from the maps and profiles filed with the application that it is not reasonable nor practicable to avoid a grade crossing at the point of proposed crossing of the Sacramento and Woodland Railroad Company with the tracks of the Southern Pacific Company in said city of Woodland, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Sacramento and Woodland Railroad Company to construct its railroad at grade across the railroad operated by the Southern Pacific Company at the east end of Main street in the city of Woodland, Yolo County, California, in accordance with the maps and profiles submitted by the Sacramento and Woodland Railroad Company, subject to the following conditions, viz:

(1) The crossing frogs necessary for the grade crossings shall be furnished by the Sacramento and Woodland Railroad Company, and shall forever hereafter be maintained in good and first-class condition for safe operation thereover by trains and cars at the expense of said company.

(2) Sacramento and Woodland Railroad Company shall install, at its own expense for the protection of said crossings, a first-class standard

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electric interlocking device of such plan and design as shall be approved by the Commission. The expense of maintaining and operating said interlocking device after its installation shall be divided equally between the Sacramento and Woodland Railroad Company and Southern Pacific Company.

(3) The plans for said interlocking device shall be submitted in triplicate to the Commission for its approval before the work of construction is begun. After its completion, and before it shall be placed in operation, it shall be inspected by the Commission, and if approved, the Commission will issue an order authorizing its operation.

(4) Until the order is issued by the Commission approving and authorizing the operation of the interlocking device all trains of both railroad companies which pass over said crossings, shall come to a full stop within two hundred (200) feet thereof, and after giving proper signals, shall pass over said crossings under full control.

(5) Sacramento and Woodland Railroad Company shall complete said device and have same ready for inspection and approval by the Commission within six (6) months after the installation of the crossing frogs. Said device shall hereafter be maintained and operated subject to such rules and regulations as this Commission may issue governing in such matters.

(6) The terms and conditions specified in this order relating to said crossings and the protection thereof shall hereafter be subject to such further revision and modification as to this Commission may seem right and proper and this Commission reserves the right to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this the 6th day of July, 1912.

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DECISION No. 127.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR PERMISSION TO CONSTRUCT ITS TRACKS AT GRADE ACROSS THE TRACKS OF THE SOUTHERN PACIFIC COMPANY AT THE INTERSECTION OF THE ALAMEDA AND SOLANO AVENUE, CITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA.

Application No. 106.

Decided July 6, 1912.

Traylor W. Bell, for applicant.
H. C. Booth, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

San Francisco-Oakland Terminal Railways, a corporation, having heretofore on June 13, 1912, filed with this Commission its application for permission to construct its tracks at grade across the tracks of the Southern Pacific Company at the intersection of the Alameda and Solano avenue, city of Berkeley, Alameda County, California, and a public hearing having this day been held on said application before the Commission in the city of San Francisco, California; and it appearing from said application and the testimony and exhibits submitted at said hearing that it is not reasonable nor practicable to avoid grade crossings at the points of proposed crossing of the tracks of the San Francisco-Oakland Terminal Railways with the tracks of the Southern Pacific Company, and that said application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be granted to the San Francisco-Oakland Terminal Railways to construct its tracks at grade across the tracks of the Southern Pacific Company at the intersection of the Alameda and Solano avenue in the city of Berkeley, Alameda County, California, as shown by the plans submitted with the application, subject to the following conditions, viz:

(1) The crossing frogs necessary for the crossings shall be furnished by the San Francisco-Oakland Terminal Railways, and shall forever hereafter be maintained in good and first-class condition at their expense.

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(2) All trains and cars of the San Francisco-Oakland Terminal Railways shall come to a full stop before passing over said crossings, and shall not proceed over same until proper signal has been received from a flagman stationed at the crossings or from the conductor or other employees who shall have passed over and personally examined and found said crossings to be safe for the passage of such trains or cars.

(3) All trains or cars operated over said crossings by the Southern Pacific Company shall pass over same under full control and at a speed not exceeding six (6) miles per hour. This company shall issue a proper bulletin or order to its employees directing the observance of this requirement.

(4) The terms and conditions specified in this order relating to said crossings and the protection thereof shall hereafter be subject to such further revision and modification as to this Commission may seem right and proper. This Commission reserves the right to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this the 6th day of July, 1912.

Decision No. 128.

IN THE MATTER OF THE APPLICATION OF THE FRUIT GROWERS OF THE STATE OF CALIFORNIA UNDER SECTION 34 OF THE PUBLIC UTILITIES ACT.

Application No. 39.

Decided July 11, 1912.

Applicants ask the Commission, under section 34 of the Public Utilities Act, to intercede before the Interstate Commerce Commission in their behalf in questions involving the reasonableness of freight rates, icing charges, minimum per carload and other matters. Section 34 construed to mean that the Commission itself may petition the Federal Commission for relief in behalf of complainants in which case the Commission obviously must submit its petition; that under all the circumstances it is neither necessary nor advisable for the Commission itself to assume such burden.

Report of the Commission.

The complaint herein arose out of the following circumstances: The fruit growers of California at a convention held in Santa Rosa, Decem-

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ber 19 to 22, 1911, instructed their committee on freight rates to investigate the reasonableness of existing interstate transportation rates and regulations of common carriers, and to call on this Commission for assistance. There is filed a certification that the following motion was passed at the convention by a unanimous vote, to wit: The the Fruit Growers' Freight Rate Committee "be and hereby are instructed by this convention to go before the State Railroad Commission and request them to take such action as will secure from the Interstate Commerce Commission for the deciduous fruit growers of this state a twenty thousand pound minimum to all destinations and a $1.00 rate to Chicago and common points."

There is also filed a copy of a resolution adopted at a "conference of shipping interests" held at Lodi, April 27, 1912, in which it is stated that the conference realizing the necessity of action in the matter of securing (1) a reduced minimum (2) a reduced refrigeration tariff (3) a reduced freight rate on deciduous interstate fruit shipments, requested that the standing transportation committee of the State Fruit Growers' Convention present their "claims and complaints" to the State Railroad Commission "for adjustment and to present to the Interstate Commerce Commission on their own behalf."

Under date of May 3, 1912, the chairman of the Fruit Growers' Committee on Rates in pursuance of the above resolution petitioned this Commission "to investigate the reasonableness of existing interstate transportation rates which in many respects we believe are unreasonable, unjust and discriminatory," and requested the Commission's secretary to advise the committee, in pursuance to the Commission's Rule No. III as to the form of procedure to be followed. Rule III provides that:

> "The Commission's secretary will, upon request, advise as to the form of complaint, petition, answer or other documents necessary to be filed in any formal proceeding and furnish such information from the files of the Commission as will conduce to a full presentation of material facts."

This letter, together with the copy of aforesaid resolution and certificate of motion, was accepted by the Commission as a complaint sufficient to proceed upon under section 34, at least in an informal manner, and a hearing was had upon the complaint at Sacramento on May 25, 1912.

At the hearing or subsequent thereto there was filed with the other papers in the case a draft of the complaint proposed to be submitted by petitioners herein to the Interstate Commerce Commission. As petitioners are seeking the support of this Commission before the Interstate Commerce Commission, the allegations of this proposed complaint should be carefully noted particularly by reason of the fact that no

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formal complaint was submitted to this Board nor is the subject-matter upon which appeal is made to this Commission stated precisely and conclusively in any one of the informal papers received.

It has been noted that the petition to this Commission is by the standing committee on freight rates of the fruit growers of the State of California.

In the proposed petition to the Interstate Commerce Commission, the petitioners are described as follows:

Complaints.	Place of business.	Character of business.
Pacific Fruit Exchange	Sacramento	Marketmen.
E. G. Williams & Sons	Stockton	Fruit growers and shippers.
San Joaquin County Table Grape Growers' Association	Lodi	Fruit shippers.
Acampo Fruit Growers' Association	Acampo	Fruit shippers.
Mason Bros.	Lodi	Fruit shippers.
Denny & Co.	Lodi	Fruit shippers.
J. A. Anderson Co.	Lodi	Fruit shippers.
Norton & Angier	Lodi	Growers and shippers.
Stephens & Humphreys	Mayhews	Growers and shippers.
Placer County Fruit Company	Newcastle	Fruit shippers.

The Central California Traction Company, Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, and Western Pacific Railway Company are named as defendants.

The allegations set forth in this complaint are as follows:

I. *With respect to refrigeration rates.*

1. Tariffs involved: Santa Fe Tariff No. 8123-F, I. C. C. No. 5864; Southern Pacific Company Joint Refrigeration Tariff No. 359-C, I. C. C. 3318; Western Pacific Railway Company Joint Refrigeration Tariff No. 81, I. C. C. 51, applicable to carloads of deciduous fruits.

2. That the rates charged for carloads of deciduous fruits under aforesaid classifications are excessive, unreasonable and unjust of and within themselves and contrary to sections 1 and 4 of the Interstate Commerce Act and also discriminatory and contrary to section 3 of said act in the following respects:

(*a*) Between Redding and Bakersfield, California, Minnesota, St. Paul, Milwaukee, Chicago, St. Louis, Memphis and New Orleans; that the reasonable rate between said points would not exceed $65 per carload. The rate charged is not stated in the complaint.

(*b*) Between said California points and all points east of Chicago, St. Louis, Memphis and New Orleans and north of Milwaukee, St. Paul, and Minneapolis.

(*c*) Between said California points and Sioux City, Omaha, Kansas

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City, Oklahoma City, Fort Worth and San Antonio; that the reasonable rate between said points would not exceed $60 per carload. The rate actually charged is not named in the complaint.

(d) Between said points in California and Spokane, Helena and Butte, Cheyenne, Denver, and Pueblo, Albuquerque and Belen; that the reasonable rates between these points would not exceed $50 per carload. The rate actually charged is not stated in the complaint.

(e) Between said points in California and Tacoma, Seattle and Walla Walla and Pendleton; that the reasonable rate between these points would not exceed $45 per carload. The rate actually charged is not stated in the complaint.

(f) Between said points in California to points in Oregon to Ogden and Salt Lake City; that the reasonable rate between these points would not exceed $40 per carload. The rate actually charged is not stated in the complaint.

3. Wherefore petitioner prays for reparation of refrigeration rates on all shipments made in the years 1911 and 1912 to basis of proposed reduction.

II. *With respect to freight rates.*

1. The tariff involved is that applicable to carloads of deciduous fruits from said California points to all points in D, E, F, G, H, I and J as defined in Trans-Continental Freight Bureau East Bound Tariff No. 3-I issued by R. H. Curtiss, agent, I. C. C. 926.

2. That the rate therein named is $1.15 per 100 minimum 26,000 pounds.

3. That said rate is excessive, unreasonable and unjust of and within itself and contrary to section 1 of the Interstate Commerce Act and also discriminatory and contrary to section 3 of said act.

4. That said rate gives undue preference and advantage to shippers from other localities and other communities.

5. That said rate subjects deciduous fruit shippers and growers of the California district above named to undue preference and disadvantage.

6. That the reasonable rate would not exceed $1.00 per hundred and minimum not higher than 24,000 pounds.

7. An additional tariff involved is that applicable to carloads of deciduous fruits from certain California points to Butte and Helena under Southern Pacific Joint Freight Tariff No. 286, I. C. C. 3194.

8. With respect to this additional tariff the same allegations as to unreasonableness and unjust discrimination under Interstate Commerce Act are made; that the reasonable rates would not exceed $1.00 per hundred and minimum not higher than 24,000 pounds.

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III. *With respect to minimum carload.*

1. It is alleged that a higher minimum than 24,000 pounds from said California points to any points in the United States and Canada applicable to deciduous fruits is unreasonable, excessive, unjust and discriminatory of and within itself and contrary to sections 1 and 3 of the Interstate Commerce Act.

IV. *General prayer.*

1. For reparation on all deciduous fruit shipments from said California points to destinations above named, shipped in the years 1911 and 1912, to basis of reductions alleged in the complaint.

2. That a hearing be given.

3. That an order be entered commanding defendants to cease said violations of Interstate Commerce Act.

4. That the Interstate Commerce Commission ascertain and fix the lawful refrigeration rates.

5. That the Interstate Commerce Commission ascertain and fix the lawful freight rates.

6. That the Interstate Commerce Commission ascertain and fix the lawful minimum pound per carload.

7. That the defendants be required to make reparation for excessive refrigeration rates and excessive freight rates paid by them on all shipments of deciduous fruits during the years 1911 and 1912, made from the said points in California to the various destinations of said shipments.

From this outline of the contents of the application herein, it will be seen that large and important matters are involved. The question of reasonableness of freight rates, reasonableness of icing charges and reasonableness of the minimum per carload are directly in issue. If the Commission on its own responsibility decides to take this matter to the Interstate Commerce Commission, it will necessarily be burdened with the presentation of an important and probably strongly contested case. Section 34 of the Public Utilities Act does not necessarily place upon this Commission the burden of prosecuting claims before the Interstate Commerce Commission. The law reads that upon application to it, such as is herein made, "the Commission may apply by petition or otherwise" to the Interstate Commerce Commission for relief. This we construe to mean that the Commission itself may petition the Federal Commission for relief in behalf of complainants, in which case it obviously must support its petition.

It is our desire not to prejudice in any wise the complaint of these shippers before the Interstate Commerce Commission, nor, on the other hand, do we feel that, under all the circumstances, it is either necessary

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or advisable for this Commission itself to take the burden of presenting this matter to the Interstate Commerce Commission. Congested as our calendar is with matters of great importance, many of which have awaited consideration for a considerable length of time, owing to the number and varied character of the complaints filed before us, we feel that our participation with complainants in presenting this case to the Interstate Commerce Commission might result in delays annoying alike to complainants and to the Commission. We feel that the necessity for our participation is not so pressing, owing to the fact that applicants appear to be thoroughly equipped to prosecute the investigation before the Interstate Commerce Commission. Under all the circumstances, it seems to us that this Commission should take into consideration the fact that if we assist in this important investigation, which we believe can be well handled without our participation, we shall necessarily neglect other important matters, which, on the ground of priority at least, are entitled to immediate attention. Our failure to participate in this case need not necessarily delay or hinder its presentation because of the fact that the growers themselves can as expeditiously present the matter as can this Commission, while if we do participate, owing to the facts already adverted to, we will necessarily delay matters of tremendous local importance which are pending before this Commission, and which this Commission is in duty bound to decide, and in which the parties must of necessity await the action of this Commission. We, therefore, feel that, under all the circumstances, it would be unfair to other litigants before this Commission for us at this time to enter into an exhaustive and time-consuming hearing before the Interstate Commerce Commission in this matter.

We do not desire to be understood as saying that merely because we have matters before us for consideration upon which we must act that we will refuse to assist in proceedings such as this involving merely discretion. If the matters involved were as important as we believe some aspects of this case to be, and the applicants by reason of pecuniary or other inability could not present their case to the Interstate Commerce Commission, then we certainly would take a different view, inasmuch as our failure to act under such circumstances would, in practical effect, be a denial of any relief to which the applicants may be entitled. Our failure to act, in our opinion, in no wise being prejudicial to the interest of the applicants, and our assuming this burden necessarily delaying consideration of matters now demanding our attention, we feel we should not take the action requested.

Dated San Francisco, California, July 11, 1912.

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DECISION NO. 129.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN LIGHT AND POWER CORPORATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR EXTENSION OF ITS TRANSMISSION LINES IN COUNTIES OF TULARE, KERN AND KINGS, ETC.

Application No. 81.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN COUNTY OF TULARE AND CITIES OF LINDSAY, EXETER AND TULARE, ETC.

Application No. 104.

MOUNT WHITNEY POWER AND ELECTRIC COMPANY

vs.

TULARE COUNTY POWER COMPANY AND SAN JOAQUIN LIGHT AND POWER CORPORATION.

Case No. 268.

Decided July 11, 1912.

There can be no question that sometimes there are arbitrary acts on the part of corporations that occupy an uncontested field and, likewise, there are always those who are ready to complain against a service however good, and, while it appears from the evidence that in some cases there may have been dereliction on the part of the Mount Whitney Power Company, complainant herein, *held*, that the evidence does not warrant a finding that the practices complained against are unreasonable.

Held, That the Tulare County Power Company failed to show that the rates accorded by the Mount Whitney Power Company under conditions applicable to it are excessive and its regulations unreasonable or that said company can furnish its commodity at a less rate and under more reasonable restrictions than those accorded by its rival. Applicant asks for a certificate of public convenience and necessity, under section 50 of the Public Utilities Act, pursuant to which it may extend its lines partially into a territory already served by an existing company. The construction was actually going on in the competitive field prior to March 23, 1912, thus rendering unnecessary a decision as to whether applicants were entitled to extend into competitive territory within which it was not on said date constructing.

Held, That while a decision on this point is unnecessary, in order to remove any question that may be raised in the future, and taking into consideration all the facts and circumstances, including the actual beginning of construction and the expenditure of money before the Public Utilities Act was even introduced into the legislature, and the fact that said public utility proceeded on the faith that it would be allowed to enter the territory involved, *Held*, that the public

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convenience and necessity will be subserved by the granting of the application in so far as the authority of this Commission may exist so to do.

Held, That the Commission does not determine finally the question of reasonableness of rates *per se* in an application for a certificate of public convenience and necessity.

Everts & Ewing, for Tulare County Power Company.

Sutherland & Barbour and *Frank H. Short*, for San Joaquin Light and Power Corporation.

Lilienthal, McKinstry & Raymond and *E. C. Farnsworth*, for Mount Whitney Power and Electric Company.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

On April 11, 1912, the Mount Whitney Power and Electric Company filed a complaint against the Tulare County Power Company and the San Joaquin Light and Power Corporation, alleging that the Tulare County Power Company was organized on June 10, 1910, and that it had under construction a 1500-horsepower steam plant which it was about to operate with a view to serving that portion of Tulare County which is bounded by Tulare, Lindsay and Exeter on the north and Strathmore on the south, and that it was threatening to extend its lines to and serve all of the territory being served by the complainant at the time of filing the complaint; that in addition to its steam plant, the said Tulare County Power Company had in contemplation a water-power plant, which, it is alleged in the complaint, could not be a success commercially because of the insufficient water supply and drop and the excessive cost of the same. It is alleged that the defendant San Joaquin Light and Power Corporation has never served any of the territory served by the complainant, but has made a contract with the Tulare County Power Company for supply of power to the latter company, under such terms that in practical effect the San Joaquin Light and Power Corporation will serve the consumers of the Tulare County Power Company.

Complainant further alleges that its plant is adequate for the present and future public convenience and necessity of the territory served by it and that the public convenience and necessity do not and will not require any extension of the system of either of the defendants and that the threatened extension of these systems will lead to needless and ruinous competition and inefficient service.

The complainant further alleges that the Tulare County Power Company intends to sell power to its stockholders at cost and urges that this Commission should prevent the Tulare County Power Company from carying out its proposed plan and should require that it charge no more for electricity to those who are not its stockholders

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than to those who are and that it should not be permitted to extend its system into the territory served by complainant and, likewise, that the San Joaquin Light and Power Corporation should be prevented from extending its system into the territory served by complainant.

On May 20, 1912, the Tulare County Power Company filed its answer to the complaint of the Mount Whitney Power and Electric Company denying the substantial allegations of the complaint and setting up affirmatively that the territory served by the Mount Whitney Power and Electric Company is not completely served and that there is ample field for the operation of both the defendant and the Mount Whitney Power and Electric Company within Tulare County. This defendant urges various delinquencies on the part of the Mount Whitney Power Company and also sets up the fact that for more than a year past it, the defendant, has been actively at work in developing power within the county of Tulare from a proposed plant on the Tule River, and that it has erected a 2,000-horsepower auxiliary steam plant in the city of Tulare; that prior to the twenty-third day of March, 1912, it had secured various franchises in the county of Tulare and municipalities therein and had commenced the actual construction work on its transmission lines along and through the territory proposed to be served by it and was performing such work and constructing its lines in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of its undertaking, and that the public convenience and necessity required that the defendant carry out and complete its plan of development by extending its line in accordance with its heretofore completed plans.

On the same date, defendant San Joaquin Light and Power Corporation answered the complaint of the Mount Whitney Power and Electric Company interposing denials to the material allegations of the complaint and further setting up the fact that it did not contemplate delivering power to consumers within the county of Tulare by means of the new line which it was contemplating from its plant on the Tule River and that during the year 1910 said defendant began the actual construction work of the extension of its transmission lines in the territory involved and ever since has been and now is prosecuting such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of its undertaking and that this was being done under franchises acquired prior to the twenty-third day of March, 1912.

On June 3, 1912, the San Joaquin Light and Power Corporation filed its application (No. 81) praying for a certificate of public convenience and necessity to carry its 60,000-volt transmission line from its contemplated hydroelectric power house on the Tule River westerly to the

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intersection of its now existing line at the site of the Tulare County Power Company's substation, thence in a southerly direction to the junction of its already existing line near Famoso, in Kern County, also from a point on its already existing north-and-south line directly west of Lindsay to a point near the Henrietta substation in Kings County. For a more particular description of the proposed extensions reference is hereby made to San Joaquin Light and Power Corporation's Exhibit "G," attached to and made part of its application.

On the thirteenth day of June, 1912, the Tulare County Power Company filed its application for certificate of public convenience and necessity for the extension of its lines and the exercise by it of franchises in the county of Tulare and the cities of Tulare, Lindsay, and Exeter in said county.

These two applications and Case No. 268 arising out of the Mount Whitney Power and Electric Company's complaint were combined and heard together. At the hearing no protest was presented against the application of the San Joaquin Light and Power Corporation, and the only objection raised to the granting of its application was made by the Mount Whitney Power Company and was directed against the contract which was entered into between the San Joaquin Light and Power Corporation and the Tulare County Power Company on the fifth day of March, 1912. The application of the San Joaquin Light and Power Corporation was merely for carrying its transmission lines across Tulare, Kern, and Kings counties, from each of which it has heretofore secured franchises, and no territory is to be served from the proposed lines for which a certificate is desired which is now served by said company, and I find as a fact that public convenience and necessity require and will require the granting of the application of said company.

While the introduction of evidence in this case consumed five days and many matters which were declared by this Commission to be relevant to an inquiry such as this in its decision in Application No. 33, being application of Great Western Power Company for certificates of public convenience and necessity, and authorizations to exercise rights or privileges under franchises, etc., yet it may be that this complaint of the Mount Whitney Power Company and the application of the Tulare Power Company can be disposed of without determining many of the very interesting and important questions which the evidence presented to the Commission. It is urged on behalf of the applicant, the Tulare County Power Company, that the Mount Whitney Power Company is not adequately serving its consumers at reasonable rates, and that the territory involved in the application is not completely served, while it is urged on behalf of the Mount Whitney Power Company that it is adequately serving the territory at reasonable rates; and, further, that

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the application of the Tulare County Power Company should not be granted by reason of the fact that its scheme is impracticable, and it is impossible for it to fulfill the promises which it is making to its consumers. Briefly stated, the scheme of the Tulare County Power Company is to furnish power at cost to certain of its stockholders and as to its other consumers to furnish power for electricity for power and lighting purposes at the prevailing rate heretofore enforced by the Mount Whitney Power Company. It does not appear that the Tulare County Power Company can consistently inveigh against the rates of the Mount Whitney Power Company if it, in fact, expects to accord identically the same rates to its patrons who are not its stockholders, and therefore I can dismiss, at the threshold of this inquiry, the complaint of the Tulare County Power Company against the alleged excessive rates of the Mount Whitney Power Company, its rival in the field. Considerable testimony was introduced affecting the attitude of the Mount Whitney Power Company toward its consumers, but I do not find that the complaint of the Tulare County Power Company directed against the service of the Mount Whitney Power Company has been sustained from the evidence. There can be no question that sometimes there are arbitrary acts on the part of corporations that occupy an uncontested field, and, likewise, there are always those who are ready to complain against a service however good, and, while it appears from the evidence that in some cases there may have been dereliction on the part of the Mount Whitney Power Company, I am of the opinion that as a general attack upon its practices, the evidence does not warrant a finding that such practices are unreasonable.

As I have said, the scheme of the Tulare County Power Company is to furnish energy for light and power purposes to its stockholders at cost and to its other consumers at the rates prevailing in the territory. Much evidence was introduced designed to show the inability of the Tulare County Power Company to furnish its commodity at a cost price of $36 per horsepower to its stockholders, but here a mere fog of opinion presents itself to the Commission. Not questioning in any regard the integrity or ability of the experts sworn in this case, yet a lamentable divergence of premises upon which conclusions are based makes their testimony practically valueless. The testimony of the officials of the Mount Whitney Power Company shows that at the present flat rate of $50 per horsepower for power purposes, and the lighting and other rates prevailing in the section involved in this controversy, that for each horsepower connected there is a gross return to the company of approximately $38.50, and that the total cost, including fixed charges, for delivering this power to the consumer is about $30, thus giving a net return of practically $8.50 per horsepower connected at the present

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rates for pumping, lighting and other purposes that prevail on the system of the Mount Whitney Power Company. The testimony of the experts for this company, however, shows varying costs and returns which are entirely inconsistent with these figures, and such costs and returns are the result of legitimate computation but based on premises that do not exist with reference to the business of the Mount Whitney Power Company. These gentlemen being, as I find myself, necessarily very much in the dark as to what amount of power the Tulare County Power Company will be able to produce, and more in the dark as to the amount of power which the same company will be able to sell, necessarily, must merely guess at some of the very material elements which will largely determine the ability of this company to fulfill its promise to its stockholders. I can not, from the evidence, determine this question, and if this application were dependent solely upon the determination of this question, I would be compelled to say that the evidence did not satisfy me that the Tulare County Power Company can deliver power to its present and prospective consumers on conditions any more advantageous to such consumers than those upon which the Mount Whitney Power Company now delivers the same commodity. Therefore, I am constrained to find that not only does the Tulare County Power Company fail in its endeavor to show that the rates accorded by the Mount Whitney Power Company under conditions applicable to it are excessive and its regulations unreasonable, but, likewise, it has failed to present the conditions surrounding its enterprise to the Commission in such light as will warrant a finding that it can furnish its commodity at a less rate and under more reasonable restrictions than those accorded by its rival, and, were it not for other considerations, I would recommend, under the authority of the decision heretofore rendered in the application of the Great Western Power Company for certificates of public convenience and necessity—No. 35—that the application be denied.

I find, however, that there are other grounds which move us to recommend the granting of the application. In the first place, I am convinced, from the testimony, that the territory involved is not nearly completely served. Regardless of this fact, however, if I found from the evidence that the applicant company had not made out its case as to the very substantial matters which we have just discussed and that the Mount Whitney Power Company had apparent ability to develop power and extend its system so as to meet the requirements of the territory as they arise and afford its patrons efficient service at reasonable rates, I should be disposed still to deny the application and permit the Mount Whitney Power Company to extend its lines and enlarge its service so as to satisfy the larger market for electricity, rather than to permit a

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new company to come in whose promise to better conditions had not been shown to be substantial and whose attack upon the rates and service of the existing company had not been shown to be well founded. I find, however, that an entirely different aspect is put upon this case by reason of the conditions which I find to have existed at the time the Public Utilities Act became effective. Section 50*b* of the Public Utilities Act reads, in part, as follows:

> "No public utility of a class specified in subsection (*a*) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; *provided,* that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion exercise such right or privilege;" . . .

The evidence is undisputed that this corporation was organized and its plan partially laid out long before the Public Utilities Act took effect, and, further, that on the seventh day of November, 1911, it was granted a franchise to prosecute its business within the county of Tulare; on the fifth day of March, 1912, it was granted a franchise to conduct its business within the corporate limits of the city of Lindsay; on the seventh day of March, 1912, it was granted a franchise to transact its business in the city of Tulare, and on the twenty-second day of March, 1912, it was granted a franchise to conduct its business within the city of Exeter. It furthermore appears, from undisputed evidence, that on June 10, 1910, that the Tulare County Power Company began work on its Tule River project by making surveys and that it has prosecuted that work ever since and that its dam and headgate were completed on the twenty-fourth day of December, 1910; that in August, 1911, the plans for the steam plant in Tulare were prepared and that on October 10th of the same year the contract for the plant was let and that the work on said steam plant has been prosecuted continuously and in good faith up to its completion, which was brought about soon after the Public Utilities Act went into effect; that on December 15, 1911, contracts were made for the construction of distributing pole lines and that the distribution of poles began on the twenty-sixth

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day of December, 1911; and that the work of constructing the distribution system has been prosecuted continuously since; that on March 10, 1912, the erection of a pole line in the city of Lindsay began, which was three days after the granting of a franchise in that city; that on the seventeenth day of March, 1912, the erection of its distribution system in the city of Exeter was commenced, which apparently was five days before the granting of the franchise therein; that on March 20, 1912—three days before the effective date of the Public Utilities Act—the erection of distribution lines in the city of Tulare was begun, which was two days before the granting of the franchise in said city. So long, however, as the city authorities permitted such action and the franchise actually was granted and became effective before the effective date of the Public Utilities Act, and construction thereunder was actually being carried on, in good faith, uninterruptedly and in proportion to the magnitude of the undertaking before said date, I am of the opinion that it would be an abuse of discretion on the part of this Commission to interfere with the future activities under said franchises. Therefore, as to the county of Tulare and the city of Lindsay, there is no question in my mind, from the evidence adduced in this case, that before the effective date of the Public Utilities Act that this company actually possessed franchises and was carrying on its work thereunder in good faith. As to the other two cities, the question is much closer, but, from all the circumstances in the case, I am of the opinion that it is not the province of this Commission at this time to interfere with the further activity of this company.

I therefore find as a fact that prior to the twenty-third day of March, 1912, the Tulare County Power Company had secured a franchise within the county of Tulare, within the cities of Lindsay, Exeter, and Tulare in said county, and had actually begun construction work under such franchises and was prosecuting such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking and that, by reason of such fact, it has been lawful since said date and is now lawful for said public utility, the Tulare County Power Company, to proceed with its said construction within the said county of Tulare and within the said cities, under whatever rules and regulations this Commission may prescribe, and that a certificate of public convenience and necessity has not been and is not now necessary to the further construction of its plant by said Tulare County Power Company within said county and within said cities, and the exercise of its said franchise. I do not mean to hold that where a utility was on March 23, 1912, actually engaged in construction in a county under a franchise theretofore granted that it thereby became entitled to extend into competitive territory within said county within which it

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was not on said date constructing. In this case the construction was actually going on in the competitive field, thus rendering unnecessary the decision on this point, and it will be left open until its presentation requires us to pass upon it.

Feeling, however, that the intent of the law is that this company should proceed in the county and the cities hereinbefore mentioned, and that the intent of the law being such, there should be no obstacles placed in its way, in order to remove any question that may be raised in the future and taking into consideration all the facts and circumstances surrounding this case, including the actual beginning of construction and the expenditure of money before the Public Utilities Act was even introduced into the legislature, all of which acts were performed and expenditure of money made by said public utility on the faith that it would be allowed to proceed within the territory involved, I find further that the public convenience and necessity, under such circumstances, will be subserved by the granting of the application in so far as the authority of this Commission may exist so to do.

Again, in this connection, I desire to call attention to the fact, as was done by this Commission in application 35, being application of Great Western Power Company for certificate of public convenience and necessity, that the granting of applications as to public utilities that were actually in being and whose projects were mapped out before those responsible for such public utilities could know that the operation of such utility might be restricted by the Public Utilities Act which is now in effect is not to be taken as an indication of the attitude which will be assumed by this Commission concerning new utilities that shall hereafter come into existence and apply to this Commission for leave to enter competitive territory.

Much has been said concerning the contract which the Tulare County Power Company has entered into with the San Joaquin Light and Power Corporation, whereby it agrees to take a minimum of 1,000 horsepower continuously throughout the year at $40 per horsepower. It is urged on the part of the Mount Whitney Power Company that this is an unconscionable contract, while the Tulare County Power Company and the San Joaquin Light and Power Corporation, with equal earnestness, urge that it is a contract fair in all respects. While I do not agree that contracts between public utilities which may in any wise affect the rates to be charged by any of the public utilities involved in such contracts, which were entered into before the Public Utilities Act became effective, are beyond the jurisdiction of this Commission, yet I believe that as to all such contracts the evidence should be very clear that such contracts are likely to work to the detriment of the rate-bearing public before this Commission shall assume to interfere with

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them. In other words, as to contracts that have heretofore been entered into under the appearance of good faith, I believe the burden should be upon the person challenging them to show their inequity and, though the evidence is conflicting, I do not believe the Mount Whitney Power Company has sustained its burden in this regard and the contract will not be disturbed.

I do not believe it is necessary at this time, holding the view that I do concerning the legal status of the Tulare County Power Company, to determine the legality of its proposed arrangement whereby it accords one rate to its stockholders and another to other consumers. There can be no question that by indirection it could bring about the same results. It may have preferred and common stock and on the preferred stock it may guarantee a certain earning, as it has here done, and to the common stock it may apportion all other earnings that remain after the interest on the preferred stock has been paid. This would, in effect, be and is the furnishing of its commodity to its stockholders at cost because it makes little difference whether the profit be rebated to them in commodity or paid to them in equivalent cash in the form of dividends. As I have said, I do not deem it necessary to determine the legality of the scheme of this company at the present time. It was intimated by the Supreme Court in the case of *Hildreth* vs. *Montecito Creek Water Company,* 139 Cal. 22, that a purely mutual water company might as to its surplus water be a public utility and there have been other cases which tend to the same conclusion. I see no reason why the same rules of law which apply to a mutual water company or a private appropriator of water should not be applicable to one who generates power for his own use or to an association of power users who combine for the purpose of constructing joint generating works, but I do not decide this question specifically, leaving it for future determination when the rates of the Tulare County Power Company are finally passed upon by this Commission. Except, in so far as the right of a rival company to enter territory already served is dependent upon its ability and willingness to furnish the commodity at a less rate than the utility already occupying the field, in application for certificates of public convenience and necessity it is not necessary for us to pass upon the reasonableness of rates, and in such cases we only pass upon the comparative reasonableness and determine, first, the question as to whether or not the utility which desires to compete is offering rates which are less than those of its rival already in the field, and, second, whether or not the rates offered by the applicant utility are at least high enough to be reasonable. In other words, we do not determine finally the question of reasonableness of rates *per se* in an application for a certificate of public convenience

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and necessity. In this case, by reason of the view that I have taken of the law involved, we do not even pass upon the relative reasonableness of the rates of the two utilities involved. Under my view of the case, the Tulare County Power Company would be in the same position legally to complain against the extension of the Mount Whitney Company's lines as is the Mount Whitney Company to complain against the extension of the Tulare County Power Company's lines within the county of Tulare and the three cities involved. I find that the Tulare County Power Company occupies the legal status of an existent, active public utility in this territory under franchises actually secured before the passage of the Public Utilities Act by reason of it having begun actual construction work and prosecuted the same in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of its undertaking prior to March 23, 1912, and, such being the case, apply entirely different rules for the disposition of this controversy than would be applied if it were a public utility desiring to exercise franchises under which no such construction work had been commenced prior to said date.

The length of time required in the hearing of this case and the conflicting testimony lead me to make an observation which I think is at this juncture pertinent. Public utilities of this State know entirely too little about their own affairs. This, I believe, most of them admit. It is necessary for the public authorities whose duty it is to regulate the affairs of these utilities and whose desire it is to regulate them justly to have a complete disclosure of all the affairs of such utilities and it is, likewise, advisable, from the standpoint of the utility compelled to be regulated and desirous of being regulated justly, to have such information at hand concerning its own business as will be designated to aid public authorities in according fair treatment to the public utility and equally fair treatment to its patrons. I can not too strongly urge that the utilities of this State immediately take steps to secure the fullest information concerning their property, their operating expenses, and their income. I do not mean by this to invite a preparation of information by utilities which will present the affairs of these utilities to the Commission in a too favorable light from the utility standpoint. The Commission's engineers and experts will always check such information and if it develops that it is prepared in any way other than in accordance with the facts, the Commission, of course, will always look askance upon such information and any information that may thereafter be submitted to it by said utility. But if the utilities will be convinced that the public authorities only desire to know the facts and will co-operate in presenting clearly the facts to this Commission, then

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regulation will be less irksome and certainly none the less just to the utilities involved.

I herewith present the following order:

ORDER.

The Mount Whitney Power Company having heretofore filed with this Commission its complaint against the San Joaquin Light and Power Corporation in Case No. 268, complaining against said San Joaquin Light and Power Corporation in extending its lines in Tulare, Kings and Kern counties, and, likewise, complaining against the Tulare County Power Company in extending its lines in the county of Tulare and in the cities of Lindsay, Tulare and Exeter, in said county, and the San Joaquin Light and Power Corporation having thereafter filed with this Commission its application—No. 81—asking for certificate of public convenience and necessity to construct certain lines in said counties of Tulare, Kern and Kings, said lines to be used merely for transmission and not for distribution of power, and the said Tulare County Power Company having filed its application No. 104—for permission to extend its lines throughout the county of Tulare and the cities of Lindsay, Tulare and Exeter, and said complaint and said applications having been combined for hearing, and notice of said hearing having been published by direction of this Commission, and public hearings having been held in the city of Porterville, in said county of Tulare, and at the office of the Commission in San Francisco, and being fully informed in the premises,

I hereby find as a fact that the present and future public convenience and necessity require and will require:

(*a*) The granting of the application of the San Joaquin Light and Power Corporation to extend its lines throughout the counties of Tulare, Kern and Kings, as set out in its application, and to exercise franchises heretofore secured in said counties as far as such exercise is involved in its application, the lines upon which such extensions are to be made to be substantially in accordance with the map filed with said application No. 81 and marked Exhibit "G," to which reference is hereby made for further particulars. Deviation from the route outlined in said Exhibit "G" may be made, however, so long as such deviations do not cause such lines to interfere with the line or plant of any other public utility. Because this company does not desire to distribute power within the territory traversed by these lines, it is of very little concern to the public or to other utilities, what route is followed:

(*b*) I further find as a fact that the Tulare County Power Company has heretofore begun actual construction work before the twenty-third day of March, 1912, and was prosecuting such work in good faith,

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uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking under franchises granted by the county of Tulare and the cities of Lindsay, Exeter, and Tulare within said county of Tulare, respectively, which were granted but not actually exercised before the twenty-third day of March, 1912, and I find that the public convenience and necessity require and will require the exercise hereafter of the said franchises by the said Tulare County Power Company, and basing the conclusion upon the foregoing findings of fact, and the further findings and statements specified in the opinion which precedes this order,

It is hereby ordered

(1) The application of the San Joaquin Light and Power Corporation, under the provisions of section 50*a* of the Public Utilities Act, that the present or future public convenience and necessity require or will require the construction specified in its petition in Application No. 81 is hereby granted as applied for.

(2) The application of the San Joaquin Light and Power Corporation, under the provisions of section 50*b* of the Public Utilities Act, for a certificate of public convenience and necessity require or will require the exercise of rights or privileges under franchises or permits granted prior to the twenty-third day of March, 1912, under which actual construction work had been begun and was being prosecuted in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, prior to said date, is hereby granted as to the counties of Tulare, Kings, and Kern, for the purpose solely and alone of conducting high tension wires across said counties and this permission does not add to the rights and privileges which said San Joaquin Light and Power Corporation enjoyed on the twenty-third day of March, 1912, to distribute power within said counties or any part thereof, or within any city within any of said counties.

(3) The application of the Tulare County Power Company, under the provisions of section 50*b* of the Public Utilities Act, for a certificate that public convenience and necessity require the exercise of rights or privileges under franchises or permits granted prior to March 23, 1912, under which actual construction work had been begun and was being prosecuted in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking, but which otherwise had not been actually exercised, is hereby granted as to all the county of Tulare and the cities of Lindsay, Tulare, and Exeter in said county of Tulare.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 11th day of July, 1912.

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DECISION No. 130.

KERN COUNTY MERCHANTS' ASSOCIATION
vs.
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SUNSET RAILROAD COMPANY, SUNSET WESTERN RAILWAY COMPANY, McKITTRICK BRANCH OF THE SOUTHERN PACIFIC COMPANY AND NEVADA AND CALIFORNIA RAILWAY COMPANY.

Case No. 125.

Decided July 11, 1912.

Complaint alleges that the rates charged by defendants between Bakersfield and points served by Sunset Railroad and Sunset Western Railroad, and the rates between Bakersfield and McKittrick branch line points between Bakersfield and Olig and intermediate points are excessive and unreasonable. Findings made as to values of defendants' properties and their revenues from operation. *Held.* That the rates complained against are excessive and unreasonable. New schedule prescribed.

E. J. Emmons, for plaintiff.

E. W. Camp, for Atchison, Topeka and Santa Fe Railway Company and Sunset Railroad Company.

C. W. Durbrow, for Southern Pacific Company, and Sunset Railroad Company.

REPORT OF THE COMMISSION.

In this complaint the plaintiff attacks the reasonableness of the rates of the Sunset Railroad Company and Sunset Western Railway between Bakersfield and the oil fields served by these lines, the rates on the McKittrick Branch of the Southern Pacific Company between Bakersfield and Olig and intermediate points, the rates of the Nevada and California Railway from Mojave to Owenyo and intermediate points and the rates of the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company from Bakersfield to Mojave and intermediate points.

At the hearing of the case, however, the issues were narrowed down to the rates between Bakersfield and points served by the Sunset Railroad and Sunset Western Railway, which has been consolidated with the Sunset Railroad, and the rates between Bakersfield and McKittrick Branch line points between Bakersfield and Olig and intermediate points.

The Sunset Railroad Company in 1911 operated 32.75 miles of railroad from Gosford to Monarch. It also operated under lease the prop-

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erties of the Sunset Western Railway from Pentland Junction to Shale. The line from Kern Junction to Gosford is owned by the Southern Pacific Company and is a part of the McKittrick Branch and is used by the Sunset Railroad between Kern Junction and Gosford under an operating arrangement. Therefore, the Sunset Railroad operates under ownership and lease 49.86 miles of railroad between Bakersfield and the West Side oil fields. This property is controlled jointly by the Southern Pacific Company and the Atchison, Topeka and Santa Fe, but operates as an independent property.

The complainant sought to show that this railroad was a comparatively inexpensive piece of property to construct and operate and that the rates exacted by the defendants yielded excessive returns on the value of the property as a result of unreasonable and excessive rates. We find, according to the reports rendered this Commission, that the cost of the Sunset Railroad between Gosford and the station of Sunset, a distance of 30.29 miles, up to 1902, which was about the time the road commenced operations, was $746,217.16. We note in the detailed statement of the cost of road, equipment and permanent improvements a charge of $473,955.89 as the cost of the right of way, which leaves a balance for the entire construction expense of the line, aside from this item, of $272,261.27. It is useless to urge that the right of way for this line cost any amount remotely approximating the sum herein set out. The evidence clearly convinces us that this sum is grossly excessive.

We find the capitalization for this 30.29 miles of line to have been $500,000 common stock and that $28,400 of bonds are outstanding. It reported that $284,000 in cash was realized from the sale of bonds and of the $500,000 stock issued, $30,000 cash was paid and $470,000 issued for right of way and station grounds. A witness who was originally interested in the construction of the line prior to the taking hold of the project by the Southern Pacific Company and the Atchison, Topeka and Santa Fe testified that he had secured the right of way and that he had expended therefor approximately $3,000 or $4,000, and further, that this right of way he gave to the defendants without any cost whatsoever to them. This testimony was not controverted. We feel, therefore, that the statement that this road cost $746,217.16 or $25,133.90 per mile is not correct, for to get such cost item we are required to give a value of $470,000 to the water in the stock of this concern. We have in mind the fact that the original cost does not necessarily determine the fair value of the property for rate fixing purposes but it is of course one of the elements which should be considered in an investigation of such "fair value." (*Smyth* vs. *Ames*, 169 U. S. 466.)

The Sunset Western Railway construction between 1908 and 1909

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from Pentland to Fellows, a distance of 14.86 miles, is reported to have cost $252,477.61, or an average of $16,990.42 per mile of road. It is interesting to note that the right of way for this line cost $890.12. There appears to have been no bonded indebtedness on this property and stock outstanding only to the extent of par value of $15,800, for which only $1,580 was realized. Until we are furnished with evidence which will change our opinion, we are forced to the conclusion that the Sunset Western Railway, which has since been extended from Fellows to Shale and which in 1911 owned 17.11 miles, was built entirely from the earnings of the Sunset Railroad.

Below are figures covering certain expenses and earnings of the Sunset Western Railway and Sunset Railroad:

SUNSET WESTERN RAILWAY.

	Operating revenues.	Operating expenses.	Taxes.	Operating income.	Other income.	Gross corporate income.
1909	$35,017 68	$17,259 21		$17,758 47		$17,758 47
1910	184,464 28	79,399 74	$1,733 44	103,331 10	$1,230 45	104,561 55

SUNSET RAILROAD.

1909	$296,609 36	$120,544 80	$2,773 42	$173,291 14		$173,291 14
1910	644,475 94	113,592 12	5,664 98	525,218 84	13,438 19	538,657 03
1911	1,065,487 85	384,520 95	1,629 57	669,337 33	9,811 53	679,148 86

SUNSET WESTERN RAILWAY.

	Hire equipment.	Rent joint facilities.	Miscellaneous rents.	Interest on funded debt.	Sinking fund.	Other interest.	Total deduct.	Credit profit and loss.
1909	$4,500 74						$4,500 74	$13,257 73
1910	20,388 10		$18,000 00			$15,717 96	36,106 06	68,455 49

SUNSET RAILROAD.

1909	$26,415 62	$3,795 32		$12,640 00			$42,850 94	$130,440 20
1910	28,211 13	3,997 56		12,640 00	$49,484 28		94,332 97	444,324 06
1911	85,702 47	4,812 55		11,989 99	55,777 34		177,242 35	501,906 51

Up to July 1, 1910, the Sunset Western Railway was operated and reported separately, but since that time, it has been leased to the Sunset Railroad Company, and, therefore, the reports for 1911 for the Sunset Railroad include the earnings from the Sunset Western Railway as a leased line.

In 1909 the ratio of operating expenses to operating revenues was 49.29 per cent.

In 1900 the ratio was 43.04 per cent.

In 1909 for the Sunset Railroad Company, the ratio of operating expenses to operating revenues was 40.64 per cent.

In 1910 the ratio was 17.63 per cent.

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In 1911, which included the Sunset Railroad and the Sunset Western as a leased line, the ratio of operating expenses to operating revenues was 36.08 per cent.

In 1910 the Sunset Railroad declared a dividend of 60 per cent, or $300,000 on its capitalization of $500,000.

In 1911 it declared a dividend of 100 per cent amounting to $500,000, and it must be remembered that of this $500,000 capital stock, upon which dividends were declared, $470,000 was issued for right of way, which a witness testified cost approximately $4,000, and cost this company nothing.

The Sunset Railroad earned per mile of road in 1911 $18,083.63; operating expenses $6,526.15 per mile; net revenue per mile $11,557.47.

It is also noted that from these earnings approximately $105,000 has been placed in a sinking fund.

After careful consideration of all of the evidence, we find that the rates of the Sunset Railroad Company between Bakersfield and Shale and intermediate points are excessive and unreasonable and that the rates on the McKittrick Branch of the Southern Pacific, between Bakersfield and Olig and intermediate points are excessive and unreasonable, and we find the following to be just and reasonable rates for the transportation of freight between these points, and the same are hereby established to become effective not later than the fourth day of August, 1912, and before which time said carriers are ordered to print and distribute and file with this Commission schedules showing such rates in accordance with the tariff rules of this Commission as found in Tariff Circular No. 2 of this Commission effective August 1, 1912.

Class Rates—Bakersfield to Sunset Railway Stations—Valley Scale.

Between	and	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Bakersfield	Bakersfield Corrals	6	5	5	4	4	4	3	2½	2½	2½
	Wible Orchard	7	6	6	5	5	5	3	3	2½	2½
	Gosford	7	6	6	5	5	5	3	3	2½	2½
	Connor	9	8	7	6	6	6	4	4	3½	3½
	Millux	12	11	10	8	8	8	5	5	4	4
	San Emido	15	13	12	10	9	9	6	5	5	4
	Pentland	15	13	12	10	9	9	6	5	5	4
	Hazelton	15	13	12	10	9	9	6	5	5	4
	Monarch	18	16	14	12	11	11	8	6	5	5
	Kerts	15	13	12	10	9	9	6	5	5	4
	Welco	18	16	14	12	11	11	8	6	5	5
	Lio	18	16	14	12	11	11	8	6	5	5
	Copen	18	16	14	12	11	11	8	6	5	5
	Signa	18	16	14	12	11	11	8	6	5	5
	Lowry	18	16	14	12	11	11	8	6	5	5
	Taft	18	16	14	12	11	11	8	6	5	5
	Midoil	21	18	16	14	13	13	8	7	6	5
	Fellow	21	18	16	14	13	13	8	7	6	5
	Suplico	21	18	16	14	13	13	8	7	6	5
	Shale	21	18	16	14	13	13	8	7	6	5

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Class Rates—Continued.

Between	and	Class rates in cents per 100 pounds. 1	2	3	4	5	A	B	C	D	E
	Stock Corral	6	5	5	4	4	4	3	2¾	2¼	2¼
	Wible Orchard	7	6	6	5	5	5	3	3	2¾	2¼
	Gosford	7	6	6	5	5	5	3	3	2¾	2¼
	Stevens	9	8	7	6	6	6	4	4	3½	3½
	Rio Bravo	12	11	10	8	8	8	5	5	4	4
Bakersfield	Bowerbank	12	11	10	8	8	8	5	5	4	4
	Buttonwillow	15	13	12	10	9	9	6	5	5	4
	Lokern	15	13	12	10	9	9	6	5	5	4
	Asphalto	18	16	14	12	11	11	8	6	5	5
	McKittrick	18	16	14	12	11	11	8	6	5	5
	Olig	18	16	14	12	11	11	8	6	5	5

We have not named any specific commodity rates, for the reason that it will be found that the class rates mentioned according to the current classification will provide lower rates than existing commodity rates, and the defendants will be required to observe the rules of this Commission that where class rates are lower than commodity rates, the class rates prevail.

Dated at San Francisco, California, this 11th day of July, 1912.

RECOMMENDATION OF THE COMMISSION IN CONNECTION WITH DECISION IN CASE NO. 125.

The following adjustments are made necessary by the decisions in Case No. 116 and Case No. 125, and it is recommended that the adjustments, in accordance with the following schedule of rates, be made:

Between SAN FRANCISCO, CAL., OAKLAND, CAL., SAN JOSE, CAL., SACRAMENTO, CAL., and	Class rates in cents per 100 pounds. 1	2	3	4	5	A	B	C	D	E
Stock Corral	73	63	52	47	43	43	30	23	20	16
Wible Orchard	73	63	52	47	43	43	30	23	20	16
Gosford	74	64	53	48	43	43	30	23	20	17
Stevens	74	64	53	48	43	43	30	23	20	17
Rio Bravo	76	66	54	49	44	44	31	24	21	17
Bowerbank	76	66	54	49	44	44	31	24	21	17
Buttonwillow	76	66	54	49	44	44	31	24	21	17
Lokern	78	67	55	50	45	45	32	25	21	17
Asphalto	78	67	55	50	45	45	32	25	21	17
McKittrick	80	69	57	51	47	47	33	25	22	18
Olig	80	69	57	51	47	47	33	25	22	18

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Class Rates—Continued.

Between LOS ANGELES, CAL., and	Class rates in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Stock Corral	64	54	45	40	37	37	26	19	16	13
Wible Orchard	64	54	45	40	37	37	26	19	16	13
Gosford	66	56	46	41	38	38	26	20	17	13
Stevens	67	57	47	42	39	39	27	20	17	13
Rio Bravo	68	58	48	43	39	39	27	20	17	14
Bowerbank	68	58	48	43	39	39	27	20	17	14
Buttonwillow	70	60	49	44	40	40	28	21	18	14
Lokern	70	60	49	44	40	40	28	21	18	14
Asphalto	70	60	49	44	40	40	28	21	18	14
McKittrick	72	61	50	45	41	41	29	22	18	14
Olig	72	61	50	45	41	41	29	22	18	14

Between STOCKTON, CAL., and	Class rates in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Stock Corral	67	57	47	42	39	39	27	20	17	13
Wible Orchard	67	57	47	42	39	39	27	20	17	13
Gosford	68	58	48	43	39	39	27	20	17	14
Stevens	68	58	48	43	39	39	27	20	17	14
Rio Bravo	70	60	49	44	40	40	28	21	18	14
Bowerbank	70	60	49	44	40	40	28	21	18	14
Buttonwillow	70	60	49	44	40	40	28	21	18	14
Lokern	72	61	50	45	41	41	29	22	18	14
Asphalto	72	61	50	45	41	41	29	22	18	14
McKittrick	74	63	52	46	43	43	30	22	19	15
Olig	74	63	52	46	43	43	30	22	19	15

Decision No. 131.

IN THE MATTER OF THE COMPLAINT OF CHAS. PAFF, C. A. BURKE, AND JOHN ROSS

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY.

Case No. 273.

Decided July 11, 1912.

Complainants complain that direct ferry service operated by respondent was discontinued; that the substituted service was inadequate and unsafe; that the rates charged are excessive.

Held, That certificate of inspection by a deputy collector of customs granting permission for the operation of the ferry in question answers the complaint that said ferry was unsafe.

Held, That the present service is inadequate.

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Robert H. Borland, for complainant.
Albert Raymond, for defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Complainants in this case allege that for more than twenty years prior to the first day of April, 1911, the Northwestern Pacific Railroad Company and its predecessors in interest operated a direct line of ferry and railroad service from San Francisco to San Rafael by way of Tiburon.

That during said times and because of said railroad service, many hundreds of people including complainants, settled in Tiburon and the adjoining community of Belvedere and expended large sums of money in real estate and erecting homes and building improvements thereon; they also allege that on or about the first day of April, 1911, the Northwestern Pacific Railroad Company discontinued all passenger service between San Rafael and San Francisco by way of Tiburon, and that said Northwestern Pacific Railroad Company discontinued all direct ferry passenger service between San Francisco and Tiburon, and that by reason of said action of said Northwestern Pacific Railroad Company in discontinuing said direct service between Tiburon and San Francisco, these complainants and all other persons living in the communities of Tiburon and Belvedere have been and are now compelled to go from their places of business in San Francisco by ferry from San Francisco to Sausalito, and thence by ferry from Sausalito to Tiburon.

Complainants further allege that by reason of said change in ferry service, and the increased length of time in making trips from Tiburon and Belvedere to San Francisco via Sausalito, together with the excessive rates charged therefor, that the inhabitants of Belvedere and Tiburon have suffered great hardships, and a consequent depreciation in the value of their holdings, and that many property owners in Belvedere and Tiburon are prevented from living in said places and pursuing their professions in San Francisco.

At the hearing in this case over forty witnesses testified, practically all of whom were property owners and residents of the above named localities, and the major portion of them made the statement that the present ferry service between Tiburon and Belvedere via Sausalito and San Francisco is satisfactory, and in some respects more acceptable than what obtained prior to April 1, 1911, on account of its being more frequent than formerly, and also the construction of the wharf at Belvedere, and the giving of service at this point is a great convenience to the citizens of Belvedere.

Relative to the allegation concerning the decreased value of property in Tiburon and Belvedere claimed to have been caused by the change

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in the ferry service now complained of, very little evidence was adduced to bear out complainants' assertions along that line; while on the other hand a statement presented by the tax collector of Marin County shows distinctly that the assessed valuation of the property in Tiburon covering the years 1910, 1911, and 1912 is at least holding its own, and from the same authority we learn that the assessed value of the property in Belvedere has increased during the above named years.

Concerning the excessive rates complained of in paragraph 15 of the complaint, no substantial evidence was presented to the Commission to prove whether the present charges for ferry service between the points in question were more or less than reasonable rates.

It further appears that complainants claim that the ferryboat furnished by the Northwestern Pacific Railroad Company for the transportation of passengers between Tiburon, Belvedere and Sausalito is small, uncomfortable, and not sufficient to satisfy the requirements of the traffic between those places, and also that said boat is unsafe for passenger service.

In answer to this it may be said that defendant furnished the Commission with a certificate of inspection, signed by H. S. Farley, deputy collector of customs, showing the physicial conditions of the ferryboat "Marin," which certificate also grants permission to said boat to navigate the waters of San Francisco Bay between Tiburon and Belvedere, and Tiburon and Sausalito and intermediate points for the term of one year ending April 26, 1913. I believe the issuing of this certificate is sufficient evidence that the boat is seaworthy to the extent of its carrying capacity.

I am of the opinion, however, that there are times when the ferryboat "Marin" is not of sufficient capacity to properly accommodate the traveling public between the points involved, and that the Northwestern Pacific Railroad Company should furnish and supply such further ferry accommodations between Sausalito, Belvedere and Tiburon whenever occasions may require, to the end that the safety and comfort of the traveling public may be safeguarded to fullest extent. In view of the evidence and testimony submitted in this case, I recommend that the remaining allegations contained in this complaint be dismissed without prejudice.

ORDER.

Petition having been filed with the Railroad Commission of the State of California by Chas. Paff, C. A. Burke, and John Ross, citizens of the towns of Belvedere and Tiburon, Marin County, California, complaining of inconvenience, inadequacy, and unsafety of the service of Northwestern Pacific Railroad Company, a corporation, performed by its ferries between the towns of Belvedere and Tiburon and the city of San Francisco, and also of the passenger train service between

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Tiburon and San Rafael, Marin County, California, and also of the fares now charged for said ferry service between the towns of Belvedere and Tiburon and the city of San Francisco; and it appearing from the testimony given at hearings held before the Commission in pursuance of said petition that the ferry service now provided by the said railroad company between the said towns of Belvedere and Tiburon and the city of San Francisco, and also that the train service now operated between Tiburon and San Rafael, is not considered by the majority of the citizens residing and owning property in said towns to be inadequate, inconvenient or unsafe, and that the schedules for same as now operated are satisfactory to said citizens, and that the fares now charged for said service are not considered unreasonable or excessive,

It is hereby ordered that petition as filed by the said citizens of the towns of Belvedere and Tiburon, Marin County, California, be and the same is hereby refused, and same is hereby ordered dismissed without prejudice, except that Northwestern Pacific Railroad Company is hereby directed to make the necessary arrangements to provide adequate ferry service between Sausalito and the towns of Belvedere and Tiburon on such occasions as its present ferryboat "Marin" is inadequate to comfortably and conveniently handle the traffic.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 11th day of July, 1912.

DECISION NO. 132.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO AND WOODLAND RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK, AT GRADE, OVER THE TRACKS OPERATED BY THE SOUTHERN PACIFIC COMPANY, AT MIKON, YOLO COUNTY, STATE OF CALIFORNIA.

Application No. 37.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

The two companies involved in the proceedings herein have, by stipulation, jointly requested this Commission so to modify the order heretofore entered herein as to relieve the Southern Pacific Company from

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the necessity of stopping its trains before crossing the line of the Sacramento and Woodland Railroad Company at the point hereinbefore determined for the crossing of these two lines.

Regardless of the agreement between the parties, the Commission feels that the safety of the public is of more importance than the convenience of operation of these two lines, and the application is denied.

Dated at San Francisco, California, this the 13th day of July, 1912.

DECISION No. 133.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION TO PURCHASE THE CAPITAL STOCK OF THE HOME TELEPHONE AND TELEGRAPH COMPANY OF PASADENA.

Application No. 54.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION TO SELL OR LEASE ITS TELEPHONE EXCHANGE AT PASADENA, CALIFORNIA, TO THE HOME TELEPHONE AND TELEGRAPH COMPANY OF PASADENA.

Application No. 58.

Decided July 13, 1912.

Applicants ask for approval of consolidation. There being no opposition, and it appearing that the results will tend greatly to the public benefit and convenience, both in the city of Pasadena and a considerable territory adjacent thereto, the application should be granted. To avoid permitting a combination under terms which would be distasteful to the city authorities, the effectiveness of the decision and order is made contingent upon the approval of same by the city through a proper ordinance. If such ordinance is not adopted, the result will be a denial of the application. Certain other conditions imposed at the request of the city.

H. D. Pillsbury, for The Pacific Telephone and Telegraph Company.

H. M. Robinson, for the Home Telephone and Telegraph Company.

William J. Carr, city attorney, for the city of Pasadena.

Sam M. Haskins, for the Home Telephone and Telegraph Company of Los Angeles.

Arthur Wright, for the United States Long Distance Telephone and Telegraph Company.

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ESHLEMAN and EDGERTON, *Commissioners.*

These two applications were filed on May 20th and 21st, 1912, respectively, and thereafter the city of Pasadena asked and was granted leave to intervene. The applications were consolidated and the hearing on the applications and the intervention held on the twenty-first day of June, 1912, in the city of Pasadena.

The testimony disclosed the situation, which is substantially as follows: As the result of litigation between the city of Pasadena and The Pacific Telephone and Telegraph Company, finally determined by the Supreme Court of the State of California (*Sunset Telephone and Telegraph Company* vs. *City of Pasadena*, 118 Pac. 796), The Pacific Telephone and Telegraph Company finds itself unable to operate further its telephone exchange business within the city of Pasadena without the granting of a new franchise by that city.

The Home Telephone and Telegraph Company of Pasadena is operating a telephone exchange in the city of Pasadena under a legal franchise. The city of Pasadena desiring to consolidate the telephone service being rendered, has refused to renew the franchise of The Pacific Telephone and Telegraph Company and has insisted upon a consolidation of its telephone service.

It appears from all the evidence before us that such a consolidation is generally desired and is desirable.

The United States Long Distance Telephone and Telegraph Company is an interested party because of the fact that it is now and has been for some time in the past rendering long distance service to the patrons of the existing Home Telephone and Telegraph Company, whereas the patrons of The Pacific Telephone and Telegraph Company have had access to the long distance lines of The Pacific Telephone and Telegraph Company, and it is proposed that, under the consolidation, the subscribers to telephone service in Pasadena shall have access to long distance service of both long distance telephone systems.

No opposition has developed from any source to these ultimate purposes and desires of the applicant and the interested parties, and it appears that they are results that will tend greatly to the public benefit and convenience, both in the city of Pasadena and a considerable territory adjacent thereto. It remains, then, to effect such a result under such reasonable terms and regulations as will safeguard the interests of the general public, the telephone users and the operating companies involved, in the future.

The city of Pasadena requests that the order which we shall issue in the premises be made subject to the endorsement of the city of Pasadena. The Commission does not desire to put itself in the light of issuing an order requiring any other approval and in this case our

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decision and order are made entirely without reference to, or recognition of, any such necessity, but desiring in every way to co-operate with city authorities jointly interested in the regulation of utilities, and in this case, the city of Pasadena and the residents thereof being the parties directly interested in the combination of these two systems, we are disposed not to permit a combination under terms which will be distasteful to the authorities of such city.

Therefore, we are disposed to make the effectiveness of this decision and order contingent upon the approval of it by the city of Pasadena through a proper ordinance and the effective date hereof will be the date of the going into effect of such ordinance. If the city of Pasadena is not satisfied with the terms imposed herein and does not pass an ordinance approving the same, then, of course, the result will be a denial of the application to consolidate.

The city of Pasadena has requested that certain conditions be imposed, most of which we now find to be entirely proper and reasonable, and with slight exception, we will make our approval contingent upon such conditions. Certain conditions asked for are imposed by operation of law, particularly those preventing the increase of rates and the impairment of the standard of service and, therefore, no conditions are necessary to be imposed with reference thereto. The only two important provisions concerning which there is much controversy are those requiring an optional two-number and particular-party service over The Pacific Telephone and Telegraph Company's lines between the Pasadena Exchange and the city of Los Angeles and the requirement of a deposit on the part of the subscriber as a prerequisite to having his service connected.

This first matter involves primarily a question of expense. Statements have been submitted to the Commission showing that a compliance with the city's request in this regard will occasion expenditures of considerable size and it seems to be undisputed that such is a fact. We do not desire to require this company to make unnecessary expenditures, but on the other hand, we desire to require the very best possible service within the territory involved. It has not been made clear to us that the added advantages to the city will offset the additional expenditure, but we do not desire to foreclose the question and we reserve a decision as to this matter, and request that some time within a year from date the city authorities present to us their further views, based upon experience with the consolidated system. If it appears at such time that any inconvenience is occasioned to the patrons of this company within the city of Pasadena by reason of not requiring optional two-number and particular-party service, the Commission will require that such optional two-number and particular-party service be installed,

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and the decision is rendered contingent upon the companies involved being willing immediately to comply with this Commission's order in this regard, if it shall hereafter be made.

As to requiring a deposit, we feel that the need of such deposit should be plain. Anything which adds to the burdens of the patrons of a utility without being of substantial benefit to the utility should, of course, not be required, and any payment which adds to the burdens of the patrons of the utility which the utility has not a plain right to exact will not by this Commission be approved. We, therefore, reject the application to require a deposit of any sum in the nature of a guarantee and telephone service shall be rendered upon application and on the signing of the company's contract, which contract shall be subject to the approval of the city of Pasadena.

We would suggest, however, that this company keep a detailed statement as to any losses which may be entailed by reason of its not being allowed to exact a guarantee, and if, at a subsequent date, it appear that these losses are sufficiently large to warrant the imposition of a deposit, we will be disposed to modify this decision and order in this regard.

The city also requests that within a reasonable time all property and rights of the Home Telephone and Telegraph Company of Pasadena shall be assigned and transferred to The Pacific Telephone and Telegraph Company. The Pacific Telephone and Telegraph Company resisted this application on the ground that the holders of the bonds of the Home Telephone and Telegraph Company might object to such a condition. At the suggestion of the Commission, the representatives of the bondholders were consulted, and we have been assured that no objection would be raised by the bondholders to the granting of this request.

We, therefore, recommend the following order:

ORDER.

Application having been made by The Pacific Telephone and Telegraph Company for authorization to purchase the capital stock of the Home Telephone and Telegraph Company of Pasadena, which application has been consolidated with the application of The Pacific Telephone and Telegraph Company for authorization to sell or lease its telephone exchange plant at Pasadena, California, to the Home Telephone and Telegraph Company of Pasadena, and a hearing having been duly held upon said consolidated applications, and it appearing to the Commission that the applications should be granted under reasonable restrictions and limitations regarding the administration and continuation of the consolidated telephone service, it is hereby ordered as follows:

The Pacific Telephone and Telegraph Company is authorized to pur-

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chase the capital stock of the Home Telephone and Telegraph Company, and The Pacific Telephone and Telegraph Company is authorized to sell or lease its telephone exchange plant at Pasadena, California, to the Home Telephone and Telegraph Company of Pasadena, California, in conformity with the following terms and conditions and contingent upon the passage of an ordinance of the city of Pasadena approving said purchase and sale and said terms and conditions.

I.

(*a*) Long distance toll service shall be maintained and be at all times available to all present or future telephone subscribers who may be subscribers to the consolidated telephone service in Pasadena, so that any subscribers in Pasadena may have incoming service from or outgoing service to the existing toll lines now entering Pasadena. It shall be optional with these subscribers over which toll system their messages shall be sent. In particular, ample and suitable space, room, and facilities shall be furnished the United States Long Distance Telephone and Telegraph Company, their successors and assigns, in any building in which the exchange telephone service shall be established, in which said long distance company shall have the right to set up, maintain, and operate a sufficient and satisfactory long distance equipment and apparatus for caring for and continuing its long distance business, both outgoing and incoming.

The United States Long Distance Telephone and Telegraph Company shall have the right and may install its apparatus, appliances, equipment, and facilities for the carrying on of and caring for its long distance business, and shall employ on its own account all operators and employees necessary to conduct said business.

The physical connections between the long distance apparatus and equipment and the apparatus of the local plant shall be made in a manner suitable to carrying on of the long distance business to the advantageous operation of the long distance apparatus and lines and proper service for the patrons of the local company and without unnecessary cost. The patrons of the local company shall have the right and option to call for long distance service over the lines of the United States Long Distance Telephone and Telegraph Company, and calls made by patrons of the local company for such service shall be so handled by the operators of the local company that the service given the patrons of the local company by the long distance company shall not be in any way at a disadvantage. All messages, both incoming and outgoing, over the lines of the long distance company, shall be handled promptly by the operators of the local company and with the same promptness that incoming and outgoing messages are handled over the long distance lines of any other company.

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The long distance company shall have the right to designate the name by which its service shall be called and published.

As new or additional equipment or alterations in equipment are made by the local company, the long distance company shall be given the information at as early a date as possible of any contemplated changes, and permitted to do anything necessary to bring its equipment into proper relation with the proposed change, and no delay or hindrance shall be made by the local company in this connection nor in the event the long distance company shall desire to make changes in or additions to its own apparatus.

(*b*) The Pacific Telephone and Telegraph Company shall maintain its present long distance service, whether particular-party or two-number, until the further order of this Commission.

(*c*) A directory or directories showing the subscribers of the Pasadena Exchange shall be furnished each of such subscribers not less than twice each year. Such directory or directories shall also contain the names and numbers of all the subscribers of The Pacific Telephone and Telegraph Company of the city of Los Angeles and contiguous territory, and in the Pasadena edition of such directory, the Pasadena lists of subscribers shall appear first. A directory or directories shall also be furnished each of such subscribers by the United States Long Distance Telephone and Telegraph Company not less than twice annually, containing all the subscribers of the Home Telephone and Telegraph Company of Los Angeles, and also the subscribers of other independent companies operating in territory contiguous to Los Angeles.

II.

LOCAL RATES AND SERVICE.

The rentals charged the subscribers of the Pasadena Exchange, and the service given and facilities afforded by said exchange, shall conform to the following requirements:

(*a*) The minimum rate for the several classes of service now prevailing in the systems of the Home Telephone and Telegraph Company of Pasadena and of The Pacific Telephone and Telegraph Company of Pasadena, respectively, and the maximum radius of service under the said several rates now existing in the said systems, respectively, shall in the several instances prevail as the maximum rate and the minimum radius.

(*b*) The average time for answering line signals shall not exceed 4.3 seconds.

(*c*) The percentage of line signals answered in ten seconds or under shall not be less than 95 per cent.

(*d*) The average time for the disconnection of calls shall not exceed four seconds.

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(*e*) The percentage of disconnections within eight seconds shall not be less than 95 per cent.

(*f*) The calls not affected by operators' errors shall not be less than 98 per cent.

(*g*) The above service requirements shall apply under normal conditions, and at no time shall the ratio of operators to traffic handled be less than is necessary to the maintenance of these standards under normal conditions.

(*h*) Telephone service shall be rendered upon application on the signing of the company's contract, which contract shall be subject to the approval of the city of Pasadena, and without a deposit of any sum in the nature of a guarantee or the requiring of payment in advance for longer than one month.

III.

GENERAL AND MISCELLANEOUS REQUIREMENTS.

(*a*) The interchange of service between the two systems pending their physical consolidation shall be effected within three months after the order granting these applications goes into effect, and the engineering work necessary to effect complete consolidation of the systems shall be fully completed within not less than twelve months from the date this order goes into effect. Strict adherence to the service requirements hereinbefore outlined will not be insisted upon during the time last mentioned, but allowance will be made for inherent difficulties in rendering first-class service during the time of effecting physical consolidation of the systems.

(*b*) The construction to be retained in service in the course of the physical consolidation as well as future installations, shall, so far as located within the city of Pasadena, be subject to the approval of the city engineer of Pasadena, and shall conform to the ordinance of said city now, or which may hereafter be, in effect. As nearly as possible installation without the city and within the exchange limits shall follow the construction within the city. Particularly shall interior block construction for the business section and rear property line construction for the residence section prevail in the preservation of existing facilities as well as future installations, subject to the supervision of the city engineer, and conditioned upon rights of way being obtainable from property owners without charge, or for reasonable compensation.

(*c*) For the purpose of determining gross receipts, a percentage of which will go to the city of Pasadena, the company shall make a just segregation of toll revenues based upon a *pro rata* determined upon the actual segregation of toll investments and expenses and exchange investments and expenses. In case the company and the city do not

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agree as to such segregation, the party dissatisfied therewith shall have the right to appeal to the Railroad Commission, the determination of which, in this respect, shall be final.

(*d*) The permission hereby granted shall become effective only upon the concurrence by ordinance of the city council of the city of Pasadena of said transactions and consolidation, and the terms and conditions thereto herein contained, and this consent shall become effective concurrently with such approval by said city council.

(*e*) Within not less than eighteen months from the date of this order, all property and rights of the Home Telephone and Telegraph Company of Pasadena shall be assigned and transferred to The Pacific Telephone and Telegraph Company, conditioned upon the assent of the city of Pasadena thereto upon reasonable terms (the terms herein stated shall be deemed reasonable), it being contemplated hereby that the true ownership and control of such exchange shall appear.

(*f*) Nothing in this order or in the proceeding preliminary thereto shall be deemed in any way to be an acceptance either by the Railroad Commission or by the city of Pasadena of the valuation placed upon the property of said Home Telephone and Telegraph Company, or The Pacific Telephone and Telegraph Company or the Sunset Telephone and Telegraph Company. The value of the properties of said companies is expressly left open for future determination.

(*g*) Nothing in this order, or in the proceedings preliminary thereto, shall be deemed in any way to constitute a contract between said telephone company, or any of them, and the city of Pasadena or the State of California. It is intended hereby to establish certain service, construction, and rate regulations to which said company, and each of them, must conform until otherwise provided by law.

The above opinion and order are hereby approved and ordered filed as the opinion and order of this Commission.

San Francisco, California, July 13, 1912.

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DECISION No. 134.

IN THE MATTER OF THE APPLICATION OF NORTHERN CALIFORNIA POWER COMPANY, CONSOLIDATED, FOR AN ORDER AUTHORIZING AN INCREASE IN THE RATES FOR ELECTRIC POWER IN THE UNINCORPORATED TOWNS OF ANDERSON AND COTTONWOOD, SHASTA COUNTY, AND IN THE UNINCORPORATED TERRITORY SURROUNDING THE INCORPORATED TOWNS OF KENNETT, REDDING, RED BLUFF, AND CORNING.

Application No. 62.

Decided July 13, 1912.

While a public utility is entitled to earn a reasonable return upon the fair value of the property impressed with the public use, the Commission may not, however, allow such utility, by increasing its rates, to make up for the losses that have been entailed by competition. Under the conditions that have existed heretofore in California, the par value of the outstanding stocks and bonds of such utilities does not bear any relation to the value of the property. High rates on the part of utilities and the extension of facilities from excessive profits have in some instances absorbed the water and have brought the value of the property up to a combined value of the stock and bond issues, but, in the absence of proof that such has been done, this Commission cannot assume that it is the case. Resort must always be had to the value of the property. The valuation of water rights discussed.

Held, That the evidence does not show the fair value of applicant's property for rate fixing purposes.

Held, That competition has brought rates below what they ought to be.

In the absence of proper evidence and upon observation by the Commission's rate experts of rates affecting other utilities of the same kind, and recurring to the evidence touching the rates prevailing prior to competition, a tentative schedule of rates to be charged prescribed pending more thorough investigation and final determination.

D. G. Reid, for applicant.

E. L. Randall, Marshall DeMotte and *F. G. Beresford*, for Corning Chamber of Commerce.

G. E. Barney, for Anderson and vicinity.

W. P. Johnson, for Red Bluff Chamber of Commerce.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

The petitioner, Northern California Power Company, Consolidated, applies to this Commission for authority to establish new schedules of rates for power and lighting in certain portions of the unincorporated territory in Shasta and Tehama counties, said new schedules of rates to

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be in excess of the rates and charges in effect in the territory involved on the tenth day of October, 1911.

The applicant states that "The request for the authorization of the new rates is for the purpose of securing uniformity in the same and to obtain a rate justified by the service rendered."

The case was set down for hearing before me, but, by invitation, Commissioner Gordon, though not formally assigned to the case, participated in the hearing, which was held at Red Bluff on the twenty-fourth day of June, 1912.

It appears that petitioner, a corporation capitalized at $10,000,000, incorporated under the laws of California in 1908, effected a consolidation, by purchase or otherwise, of the Northern California Power Company, Battle Creek Power Company, Keswick Electric Company, Redding Water Company and Tehama County Power and Transportation Company, and at the time of its application it also includes its late competitor, the Sacramento Valley Power Company, hereinafter referred to. It further appears from the testimony that the Northern California Power Company, the main predecessor of the present company, began business in the territory involved in the year 1901 and has ever since, by itself or successors, been engaged in the business of distributing and selling electrical energy.

The Northern California Power Company, Consolidated, now owns and operates seven hydroelectrical generating plants on Battle Creek, Cow Creek and other streams in Shasta County, with an aggregate rated capacity of about 38,000 kilowatts, and has constructed and maintains about 1,500 miles of high-tension transmission lines and primary and secondary distributing lines in the counties of Shasta, Tehama, Butte, Glenn, and Colusa, together with the necessary substations and equipment at the various distributing centers.

Early in the year 1908, Shasta Power Company, later combined with the Northern Light and Power Company to form the Sacramento Valley Power Company, entered the local field theretofore served by petitioner and at once entered into active competition with the petitioner in the territory involved in this application. It is urged that this latter company was incorporated merely as a speculative enterprise for the purpose of later selling out to the petitioner and that in carrying on its business it had little, if any, regard for the economies and profits of the legitimate business which it was supposed to be engaged in. There is some ground for such a conclusion. It is clearly evident that no genuine attempt was made by either the Sacramento Valley company or the petitioner during the time of their rate contest to gauge the selling price of the commodity in which they were dealing by the actual cost thereof or to maintain uniform rate schedules. It is obvious that any

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selling price or operating policy which entails loss or which hinders general and profitable development of the territory or market can not be maintained and, while it can not be determined from the evidence which one of these companies actually began these rate-cutting practices, yet it is clear that throughout the territory in which these companies were operating they for more than two years engaged in a reckless and expensive conflict and that during the existence of such competition rates were reduced, in some instances, to a point below the actual cost of production and, in fact, in the town of Kennett, a municipality of about 1,200 inhabitants, service was actually given free. In this chaotic condition the rate of charge was in many cases merely what the consumer chose to pay, without any regard to the cost of the service rendered and all semblance of a regular schedule of rates disappeared. Accounts were carried over long intervals with no attempt to enforce payment, settlements by rebate or cancellation were freely made and competition for business degenerated in reality to a contest of strength between the two contestants, the outcome of which depended only on the question of which company could longer sustain the financial loss involved. This struggle was still in progress on the tenth day of October, 1911, and was only brought to a close by the usual outcome of such conflicts, the purchase by one of the companies of the property of the other and a short time after the tenth day of October, 1911, the Northern California Power Company, Consolidated, purchased the Sacramento Valley Power Company. Having settled the question of competition, the petitioner desires to remodel its rate schedules and that desire brings this application before this Commission. If the present act were not in effect, and utilities were allowed, in unincorporated territory, to charge whatever rates they saw fit, we leave it to the patrons of this utility to determine what course they believe the Northern California Power Company, Consolidated, would have taken. Inevitably there would have been an increase in rates, and, unless those in charge of this enterprise are different from ordinary human beings, we may suppose that whatever losses had been entailed during the rate war that heretofore existed would have been recouped in these higher rates. Yet, regardless of this fact, we find in this territory, as we have in other, that the patrons of utilities short-sightedly make such competition possible to secure a temporary advantage which always results in a permanent disadvantage. This Commission has already, in settling the controversy between the Pacific Gas and Electric and Great Western Power companies, announced that it will not hereafter countenance wars in competitive territory under its jurisdiction and the wisdom of that conclusion I believe is borne out by the facts in this case. As to competition within cities, we, however, have no control

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but we would earnestly call the attention of city authorities to the danger of allowing competition to force rates below a reasonable scale and we would again call the attention of the public utilities to our decision in the case referred to above wherein we have indicated that we will be disposed to take the scale of rates under competition as reasonable to be imposed in non-competitive territory. The evidence clearly presents the necessity of some increases in these rates but, because of the general lack if information concerning the affairs, to which we have heretofore referred (*Mount Whitney Power Company* vs. *Tulare County Power Company et al.*, No. 268) it does not clearly disclose what rates should prevail in this territory. We have every disposition to be fair to this company and to permit it to have a reasonable return upon the fair value of the property impressed with the public use. We are not at all disposed, however, to allow it to make up for the losses that have been entailed by the competition heretofore referred to. An endeavor was made to show the value of the property involved, but I am not at all satisfied with the showing made. The applicant has arrived at a valuation practically by taking the par value of its outstanding stocks and bonds. It is as well now as at any time to indicate our attitude with reference to this matter. We do not believe that, under the conditions that have existed heretofore in California, the par value of the outstanding stocks and bonds bears any relation to the value of the property. To be sure, the Supreme Court of the United States has said that this is one of the relevant matters to be considered in a rate-fixing inquiry, and, further, the constitution of this State provides that no corporation shall issue stock or bonds except for money paid, labor done or property actually received (section 11, article XII). The provisions of the Civil Code (sections 309 and 456) have heretofore prevented and do now, as to all except utility corporations, prevent, the issuance of bonds in excess of the total subscribed capital stock. This provision has brought about a condition wherein it has been the practice to issue the stock of corporations for the purpose of raising money by bond issues instead of issuing the stock and raising money by its sale, as is the design of the law. It is a matter of common knowledge that stock bonuses have heretofore been usual with bond issues, even up to the total amount of the bond issue. This has brought about a condition wherein the issued stock of the corporation ordinarily represents nothing except a voting privilege. To be sure, high rates on the part of utilities and the extension of facilities from excessive profits have in some instances absorbed the water and have brought the value of the property up to a combined value of the stock and bond issues, but, in the absence of proof that such has been done, this Commission can not assume that it is the case. In other words, resort must always be had to the value

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of the property under whatever legal rules apply to the determination of such valuation and the fact that a certain amount of outstanding stocks and bonds exists, in my opinion, has very little bearing upon the value of the property for rate fixing purposes under the corporate procedure that has heretofore obtained in this State.

The actual value of the property as urged is in the neighborhood of $20,000,000. This is arrived at by taking a value of $400 per horsepower for power installed and multiplying the total capacity of the various plants by this figure, the total possible output of power being in the neighborhood of 51,000-horsepower. The bonded indebtedness is given as $6,667,300. Careful questioning elicited the fact that there had never gone into this property more than a little over $11,000,000. The money acquired from the sale of both stocks and bonds was definitely determined to be close to this figure. The outstanding bonded indebtedness being something over $6,000,000, the company figures that its equity amounts to close to $16,000,000 and upon this valuation it should be allowed a return of 9 per cent. It is interesting to note that the stock of the corporation amounts to $10,000,000 and its outstanding bonded indebtedness, as has heretofore been stated, is something over $6,000,000, which brings an approximate total of $16,000,000 as representing the aggregate par value of the outstanding stocks and bonds. If the cost of this property in money is to be taken into consideration and this cost has any bearing upon the fair value of the property, and if we assume, as this corporation does, that its equity in the property is the value of the property less the outstanding bonded indebtedness, then, instead of in the neighborhood of $16,000,000, it would have in the neighborhood of $6,000,000 as its equity in the property. In response to inquiries as to the source of the value of ten or eleven million dollars, which it is urged the present value of the property has in it over the original cost, it was urged that this difference was represented by the water rights of the company. Under the provisions of the constitution and statutes of this State, it is legal for corporations and individuals to appropriate water for power or irrigation or other legitimate beneficial purposes, and so long as such water is devoted to beneficial purposes, the appropriation is protected. The rule of "first in use, first in right," prevails in this State. To be sure, the appropriator who has laid his plans and complied with the law and is prosecuting his enterprise with due diligence in proportion to the magnitude of his undertaking, is protected, and, by the doctrine of relation the time of his right dates from the time of the *bona fide* beginning of the work necessary to perfect his appropriation. Neither private nor public appropriators have heretofore been required initially to pay to the State anything for the right to appropriate. In other words, the State

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has held out as inducement to those who desire to develop power or water for irrigation, that the first taker might hold in trust for the public, if it is a public appropriation, and during its continued use if it were a private appropriation, and that by expending money in legitimate development the public appropriator could be protected in his rates and the private appropriator protected by his right to continued use.

But now the public appropriators of water for irrigation and power purposes are urging that they may capitalize their priority and that, although they have been required to pay nothing for the right to take the water, the generosity of the public in giving it to them instead of selling it to them shall be capitalized. To be sure, I realize that this is a very large question, and, of course, as to any private water rights which are required to be condemned or are purchased by these public agencies, there is no doubt that they should have consideration in a rate-fixing inquiry but it is hard for me to understand how we are going to place a value for rate-fixing purposes upon the generosity of the public and if we place such value, how we are to determine it. The method used in this case is interesting but, unfortunately, a mere inspection of it shows that it absolutely can not be justified. The applicant has taken the cost of generating and installing ready for service of a horsepower of electrical energy generated by steam and has accepted, as was testified, the figures of the Pacific Gas and Electric Company in this regard, showing that for each horsepower of its steam-produced electricity it has an underlying investment of $400. This may well be a fact but how it has any bearing on the investment of a horsepower or hydroelectric energy is beyond my comprehension.

The discussion of these questions is necessary to present to the applicant the basis for my conclusion that the evidence does not show the fair value of this property for rate-fixing purposes. In order to raise rates, it is incumbent upon the utility to justify the increase before this Commission and if I desired to be at all technical, I feel that I could legally deny the relief sought. I do not desire to take this course because I am convinced, from all the facts and circumstances surrounding this case that this competition has brought rates below what they ought to be. Of course, this is evident in the case where no charge is made but, having determined that some relief is necessary, I am at a loss to determine what relief. Justice to this utility requires that this Commission accord to it reasonable rates and relieve it from its present rate condition, but justice to the rate payers also demands that we do not fix rates that are too high. Hence, I find myself in the dilemma wherein if I do not act I am unjust to the utility and if I do recommend action, I may be, on account of lack of information, unjust to the consumers.

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Under this state of facts, I have had our rate experts resort to an observation of rates affecting other utilities of the same kind, and, likewise, I have recurred to the evidence touching the rates prevailing before the competition began, and, taking these two factors into consideration, I am ready to make a tentative recommendation as to rates that shall prevail until either by complaint of the patrons, application of the utility or on this Commission's own initiative, the matter shall be investigated thoroughly and the proper rates determined, if, in the condition of production and distribution of electrical energy in this State, it is possible to determine what is a proper rate.

It is evident that petitioner now enjoys a monopoly in the distribution and sale of electric energy throughout the territory covered by the application and that all other territory now served by petitioner is non-competitive excepting only portions of Butte County where the Sacramento Valley Power Company was actively engaged in competition with the Pacific Gas and Electric Company at the time when the Sacramento Valley Power Company was purchased by petitioner. Obviously, in view of the fact that the Pacific Gas and Electric Company is a large and important customer of petitioner at Chico, and considering operations of the two utilities in other contiguous territory, the present competition in Butte County is merely nominal and the principals are operating under a mutual understanding.

Previous to the advent of the Sacramento Valley Power Company or its predecessor into the territory set forth in the application, it appears that petitioner's lighting service was charged for on a flat rate base, that metered service was not optional with consumer, and that meters were only installed at the expense of the customer.

The following flat rate schedules were in force and seemingly closely adhered to:

RESIDENCE.

1 16-candlepower light	$1 00
2 16-candlepower lights	1 30
3 16-candlepower lights	1 30
4 16-candlepower lights	1 70
5 16-candlepower lights	2 00
6 16-candlepower lights	2 35
7 16-candlepower lights	2 70
8 16-candlepower lights	3 05
9 or 10 16-candlepower lights	3 50

From 10 lights up at 35 cents each.

BUSINESS HOUSES.

1 16-candlepower light	$1 00
2 16-candlepower lights—each	70
3, 4 or 5 16-candlepower lights—each	65
6 or more 16-candlepower lights—each	60
Arc lights	8 00

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SALOON, OR ALL NIGHT RATE.

1 or 2 16-candlepower lights	each	$0 80
3, 4 or 5 16-candlepower lights	each	75
6 or more 16-candlepower lights	each	70
Arc light		10 00

Hotel incandescents 16 candle power at 35 cents each.

Restaurants and stables same rate as saloon.

Offices, same as residence.

Barber shops, same as business houses.

For 32 candle power double rate.

For 8 candle power, one half rate, except in cases of hotel and lodging houses where rate is 20 cents straight.

Desk fans, 12 inch, per month, $2.00, or $8.00 per season in advance. Season from May 1st to October 1st. Ceiling fans, per month, $3.00, or $12.00 per season in advance.

Petitioner asks for authority to abandon these schedules except in certain special cases, and to substitute therefor a sliding scale under schedule which is now, and was during the competition between petitioner and the Sacramento Valley Power Company in the territory mentioned in the application, and on October 10, 1911, in effect throughout that portion of Glenn and Colusa counties served by petitioner. This proposed sliding scale schedule is as follows:

LIGHTING RATES.

Service charge (minimum guarantee) $1.00 per meter per month.

Current consumption per month per meter.	Rate.
Less than 25 kilowatt hours	10 ¢ per kilowatt hour
25 kilowatt hours and less than 40 kilowatt hours	9 ¢ per kilowatt hour
40 kilowatt hours and less than 75 kilowatt hours	8 ¢ per kilowatt hour
75 kilowatt hours and less than 110 kilowatt hours	7 ¢ per kilowatt hour
110 kilowatt hours and less than 160 kilowatt hours	6½¢ per kilowatt hour
160 kilowatt hours and less than 240 kilowatt hours	6 ¢ per kilowatt hour
240 kilowatt hours and less than 360 kilowatt hours	5½¢ per kilowatt hour
360 kilowatt hours and less than 550 kilowatt hours	5 ¢ per kilowatt hour
550 kilowatt hours and less than 1000 kilowatt hours	4½¢ per kilowatt hour
1000 kilowatt hours and over	4 ¢ per kilowatt hour

The above schedule will apply to all secondary current delivered to term contract customers. Reasonable line extensions will be allowed to reach customer's premises, depending on size of installation and term of contract.

Single phase meters (of standard type and voltage) will be supplied without charge by the company.

In order to accomplish the abandonment of a flat rate schedule and put all customers on a meter basis, permission would have to be secured from the Commission, as such a change would undoubtedly result in increasing the charges to some customers; however, in considering such changes the right of a utility to abandon a certain kind of service and substitute therefor a service which represents advancement in the art is recognized. As in this case, the two classes of service are not to be

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optional with the consumer; the only question to be considered is whether or not the change amounts to an advance in rates in a material number of cases.

Upon investigation, it is found that the proposed meter schedules of charges for lighting service, as compared with the flat rate schedules in effect before the Sacramento Valley Power Company entered the field, actually amounts to a material reduction under practically all ordinary operating conditions.

In regard to petitioner's request for authority to continue this former flat rate charge, as its option, to certain lighting customers, the authorization requested would clearly permit and recognize discrimination unless the published schedules of such utility clearly define what classes are entitled to a meter rate and what class shall receive a flat rate, otherwise the utility would have to adopt both flat and meter rates and the option should rest with the consumer.

I am of the opinion that any system of flat rates in connection with residence or general commercial lighting, which does not include some reliable demand limiting device, is illogical, and involves the element of uncertainty in altogether too great an extent to permit of any assurance of fairness either to the public or to the operating utility.

Petitioner's flat rate schedule for lighting in particular is almost totally lacking in merit, and appears to have been adopted merely as a matter of expediency at a time when its revenue from lighting service was small and relatively expensive. It is higher than the prevailing practice as established by other similar utilities for the same class of service and higher than appears justified in the territory involved in petitioner's application.

The proposed meter schedules for lighting follows modern practice and appears to have been carefully constructed, however, and a comparison with the general practice of charging in this State under similar conditions fails to justify a top rate of 10 cents per kilowatt hour. A top rate of 9 cents per kilowatt hour would, in my opinion, be reasonable from a comparative standpoint, and the schedule proposed by petitioner should be authorized except for the first step. The schedule would then appear as follows:

Current consumption per month per meter.	Rate.
Less than 40 kilowatt hours	9 ¢ per kilowatt hour
40 kilowatt hours and less than 75 kilowatt hours	8 ¢ per kilowatt hour
75 kilowatt hours and less than 110 kilowatt hours	7 ¢ per kilowatt hour
110 kilowatt hours and less than 160 kilowatt hours	6½¢ per kilowatt hour
160 kilowatt hours and less than 240 kilowatt hours	6 ¢ per kilowatt hour
240 kilowatt hours and less than 360 kilowatt hours	5½¢ per kilowatt hour
360 kilowatt hours and less than 550 kilowatt hours	5 ¢ per kilowatt hour
550 kilowatt hours and less than 1000 kilowatt hours	4½¢ per kilowatt hour
1000 and over	4 ¢ per kilowatt hour

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This schedule should apply to all customers whether contract or otherwise, with a minimum monthly bill of $1.00 per meter.

It is obvious that under certain conditions the revenue derived from lighting customers having small demand and using little current is scarcely sufficient to pay the expenses incident to such service, and that the necessity of installing meters for such consumers, thereby increasing the customer's cost, might impose an undue burden on the utility without any material benefit to the public. In the event that petitioner finds it impracticable, for reasons herein stated, to meter certain classes of consumers, the Commission will reconsider the general order for abolition of such flat rates and will grant such relief as may seem equitable.

The fact that much of the petitioner's business outside of incorporated towns is the supplying of power for purposes of irrigation pumping, which yields a revenue only during about six months of the year, introduces a matter, in connection with lighting service from the power transformers, worthy of consideration. If the transformers are left connected to petitioner's line during the portion of the year when no power is required for pumping merely to supply the customer with light, it is evident that, inasmuch as all such business is metered on the low-tension side of the line transformers, that there is a transformer loss out of all proportion to the revenue derived only from lighting. To compensate for such loss, the petitioner should be permitted to make a charge of 50 cents per month in addition to the meter rate for such service, however, the same consideration should be granted lighting customers who purchase energy at the primary line voltage that is given power customers under the same conditions, *i.e.*, a rate of one cent per kilowatt hour less than is charged consumers receiving secondary service. The lighting rate to such would then be as follows:

Current consumption per month per meter.	Rate.
Less than 40 kilowatt hours	8 ¢ per kilowatt hour
40 kilowatt hours and less than 75 kilowatt hours	7 ¢ per kilowatt hour
75 kilowatt hours and less than 110 kilowatt hours	6 ¢ per kilowatt hour
110 kilowatt hours and less than 160 kilowatt hours	5½¢ per kilowatt hour
160 kilowatt hours and less than 240 kilowatt hours	5 ¢ per kilowatt hour
240 kilowatt hours and less than 360 kilowatt hours	4½¢ per kilowatt hour
360 kilowatt hours and less than 550 kilowatt hours	4 ¢ per kilowatt hour
550 kilowatt hours and less than 1000 kilowatt hours	3½¢ per kilowatt hour
1000 kilowatts and over	3 ¢ per kilowatt hour

The above schedule subject to a minimum monthly charge of 50 cents per month.

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The power schedule in effect before the advent of competition in the territory involved in petitioner's application was as follows:

3 cents per kilowatt hour where the installed demand is less than 10 horsepower.
2 cents per kilowatt hour where the installed demand is 10 horsepower or over.

The above schedule was for current delivered at the primary line voltage only, and the line transformers were considered as a part of consumer's equipment. A minimum charge of $12 per horsepower of installed demand per year was collected even though the actual consumption during the year, at the rate to which the installation was entitled, does not amount to $12 per horsepower.

The proposed power schedule is as follows:

WHOLESALE.

Base demand charge $12 per horsepower per year.

Customers' maximum demand.	Rate.
Less than 1-horsepower	5 ¢ per kilowatt hour
1-horsepower and less than 2-horsepower	4½¢ per kilowatt hour
2-horsepower and less than 3-horsepower	4 ¢ per kilowatt hour
3-horsepower and less than 4-horsepower	3½¢ per kilowatt hour
4-horsepower and less than 5-horsepower	3¼¢ per kilowatt hour
5-horsepower and less than 7½-horsepower	3 ¢ per kilowatt hour
7½-horsepower and less than 10-horsepower	2¾¢ per kilowatt hour
10-horsepower and less than 15-horsepower	2½¢ per kilowatt hour
15-horsepower and less than 20-horsepower	2¼¢ per kilowatt hour
20-horsepower and over	2 ¢ per kilowatt hour
20-horsepower and less than 30-horsepower	2 ¢ per kilowatt hour
30-horsepower and less than 50-horsepower	1¾¢ per kilowatt hour
50-horsepower and less than 100-horsepower	1⅝¢ per kilowatt hour
100-horsepower and over	1½¢ per kilowatt hour
100-horsepower and less than 250-horsepower	1½¢ per kilowatt hour
250-horsepower and less than 500 horsepower	1⅜¢ per kilowatt hour
500-horsepower and less than 1000 horsepower	1¼¢ per kilowatt hour
1000-horsepower and less than 2000-horsepower	1⅛¢ per kilowatt hour
2000-horsepower and over	1 ¢ per kilowatt hour

The consumer agrees to a contract of not less than five years and furnishes his own transformers; if company furnishes transformers, the rate is one cent per kilowatt hour higher.

A minimum demand charge of $1.00 per horsepower of installed demand per month for secondary power appears reasonable, but should be made as a monthly charge during the period of active use. The customer should have the option of paying the minimum throughout the year or having his apparatus disconnected from the lines of the company during the season when no power is required and thus be relieved from the payment of the full minimum on his entire connected demand. Obviously, however, the consumer should pay some return to the utility on the investment represented by line transformers and meters during

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the period of nonuse. Just what the charge on the idle investment should be is not quite clear but at any event it should not exceed one half the minimum charge during the period when consumer's installation was operating.

The schedule relating to energy purchased at the primary line voltage necessitating the ownership of line transformers by consumer as part of his equipment seems reasonable as to the charges per kilowatt hour, but a yearly minimum of $12 per horsepower based on the connected load as appears to have been the practice of petitioner does not seem justified, owing to the fact that for at least one half the year consumer's equipment is not operating. Any demand charge except for very small installation, based on a rated output of consumer's motor installation is clearly unjust, because there is no relation between the rating of a motor and its possible or probable demand on the utility's installed capacity. Hence, it is deemed proper that a utility shall, upon request of consumer, ascertain by test the actual demand in each case and make the charge accordingly. In the event that no test is made at consumer's demand, owing to the fact that consumer has not so requested, the demand should be taken as not exceeding 75 per cent of the rated output of consumer's motor or motors. It is therefore ordered that a minimum demand charge established by petitioner shall be based on 75 per cent of the rated output of his intallation, or as otherwise determined by actual test. The petitioner is not denied the right to demand either a higher rate with greater minimum charge or both in cases where the investment in line extensions is greater than would be justified by the rate and minimum charges herein considered equitable.

Obviously it must not be left to the utility to determine the line extension which will be made under the prevailing rates. The utility will make all extensions, but in any case where application for light or power is made involving extensions, which, in the opinion of the utility are not justified by the return from the power, the matter must be submitted to this Commission and a determination had. In other words, the applicant is denied any option of determining to whom it will extend its lines. It must extend to all applicants unless, on presentation of the matter to the Commission, the Commission finds that it would not be fair to have the extension made by the utility, in which event the Commission may impress terms upon the consumer as conditions precedent to the requiring the utility to make the extension.

Taking into consideration all of the facts hereinbefore referred to and the rates charged for similar services by other companies, under similar conditions, and the rates charged by this company before the advent of competition, I hereby recommend the following order:

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ORDER.

The Northern California Power Company having heretofore filed with this Commission an application to establish rates in certain territory within the counties of Shasta and Tehama, and said application having been set for hearing, and notice of said hearing having been published by direction of this Commission, and a public hearing having been held on said application in the city of Red Bluff in the county of Tehama, and being fully informed in the premises, I hereby find as a fact that the following rates are reasonable to be charged within the territory involved by petitioner under the restrictions set out in this decision and the said rates are hereby established to become effective twenty days from the date hereof:

General Lighting Schedule.

(Secondary service at 110 or 220 volts.)

	Rate.
Less than 40 kilowatt hours	9 ¢ per kilowatt hour
40 kilowatt hours and less than 75 kilowatt hours	8 ¢ per kilowatt hour
75 kilowatt hours and less than 110 kilowatt hours	7 ¢ per kilowatt hour
110 kilowatt hours and less than 160 kilowatt hours	6½¢ per kilowatt hour
160 kilowatt hours and less than 240 kilowatt hours	6 ¢ per kilowatt hour
240 kilowatt hours and less than 360 kilowatt hours	5½¢ per kilowatt hour
360 kilowatt hours and less than 550 kilowatt hours	5 ¢ per kilowatt hour
550 kilowatt hours and less than 1000 kilowatt hours	4½¢ per kilowatt hour
1000 kilowatt hours and over	4 ¢ per kilowatt hour

Minimum monthly charge $1.00 per meter.

(2) *"Wholesale" Lighting Schedule.*

(Primary service at 1,100 volts or over involving ownership of transformers by the consumer.)

	Rate.
Less than 40 kilowatt hours	8 ¢ per kilowatt hour
40 kilowatt hours and less than 75 kilowatt hours	7 ¢ per kilowatt hour
75 kilowatt hours and less than 110 kilowatt hours	6 ¢ per kilowatt hour
110 kilowatt hours and less than 160 kilowatt hours	5½¢ per kilowatt hour
160 kilowatt hours and less than 240 kilowatt hours	5 ¢ per kilowatt hour
240 kilowatt hours and less than 360 kilowatt hours	4½¢ per kilowatt hour
360 kilowatt hours and less than 550 kilowatt hours	4 ¢ per kilowatt hour
550 kilowatt hours and less than 1000 kilowatt hours	3½¢ per kilowatt hour
1000 kilowatt hours and over	3 ¢ per kilowatt hour

Minimum monthly charge 50 cents per meter where lighting service is used in connection with power service.

(3) *Retail Power Schedule.*

(Secondary service at 110, 220 or 440 volts involving ownership of transformers by petitioner.)

4 cents per kilowatt hour where the installation is less than 10-horsepower.
3 cents per kilowatt hour where the installation is 10-horsepower or over.

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Minimum demand charge $1.00 per horsepower per month based on consumer's actual demand as ascertained by test.

(*f*) *Wholesale Power Schedule.*

(Primary service at 1,100 volts or over involving ownership of transformers by consumer.)

3 cents per kilowatt hour where the installation is less than 10-horsepower.
2 cents per kilowatt hour where the installation is 10-horsepower or over.

Minimum demand charge $12 per horsepower per year based on consumer's actual demand as ascertained by test.

If no test is made of consumer's actual maximum demand said demand shall not be taken as exceeding 75 per cent of the rated output capacity of the motor or motors.

These schedules shall apply to all consumers irrespective of the contract which may be involved and no contract shall be exacted for a longer period than one year.

All necessary meters, line protective apparatus, and distributing lines shall be provided by and at the expense of petitioner.

In accordance with statement in decision, where application is made for furnishing of electricity for light or power purposes, and the company applicant herein feels that the expenditure in order to furnish such electricity is too great, it may apply to the Commission and the Commission will determine whether or not the consumer shall be required to pay a part of the cost of installation. In no event shall the company have, in itself, the option of refusing any demand unless on application to the Commission, it is empowered so to do.

The foregoing decisions and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1912.

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DECISION NO. 135.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY, MARYSVILLE AND COLUSA BRANCH, FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS.

Application No. 65.

Decided July 13, 1912.

The necessities of applicant are such that it will be unwise to withhold a preliminary order, granting permission to an issue of part of the bonds applied for, until a conclusion can be arrived at as to whether the total amount of bonds should be permitted to issue.

T. T. C. Gregory, for applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by Northern Electric Railway Company—Marysville and Colusa Branch—for an order authorizing the issuance by applicant of $1,100,000 face value of thirty year five per cent bonds under a mortgage executed to the Mercantile Trust Company December 1, 1911, said mortgage providing for a total issue of $1,500,000 face value of bonds. Applicant is a corporation organized in April, 1910, under the laws of California for the principal purpose of building and operating a railroad commencing in the city of Marysville, Yuba County, running thence in a westerly and northwesterly direction to and through the town of Yuba City, Sutter County, thence to and in the town of Colusa, Colusa County, the estimated total length being about 30 miles.

The condition of the capitalization of applicant is as follows:

Authorized capital stock, all common, all of which is issued and outstanding	$1,500,000 00
Bonds authorized	1,500,000 00
Bonds issued	150,000 00

Subsequent to the formal hearing in this matter, applicant requested that the Commission issue a preliminary order authorizing the issuance of $600,000 face value of bonds, leaving the remainder of $500,000 face value of bonds asked for in the application, to be considered by the Commission later in a final order. Applicant urged that it was in immediate need of obtaining funds with which to pay indebtedness for materials already purchased for the construction of its road and for the purchase of additional materials and other property set out in the application.

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Before finally passing upon the request contained in the application that $1,100,000 face value of bonds be authorized, the whole subject of the capitalization of this corporation should be considered more thoroughly than it has been possible to do, but the necessities of applicant are such that it will be unwise to withhold this preliminary order until a conclusion can be arrived at as to the total amount of bonds asked for in the application.

The money obtained from the sale of these bonds is proposed to be used for the purpose of acquiring rights of way and terminal properties; the construction and completion of a standard gauge commercial road for the transportation of passengers, freight, mail, baggage and express over the route above described, to be operated by a third rail electric system, and the construction and erection of a combined railroad and highway bridge across the Sacramento River at Meridian, all as set out in detail in the application on file herein.

The preliminary order authorizing the issuance of $600,000 face value of bonds may properly be made at this time because the money to be derived from the sale of these bonds is to be used in constructing and acquiring property useful to the railroad when completed, and by agreement with the applicant the status of the capitalization of applicant is to remain as it is now, awaiting further order of this Board.

I therefore recommend that the application be granted as to $600,000 face value of bonds, and that as to the remaining bonds mentioned in said application that they be made the subject of an order of this Commission hereafter to be made and entered.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Northern Electric Railway Company—Marysville and Colusa Branch—for an order authorizing the issue by said company of $1,100,000 face value of first mortgage, five per cent sinking fund thirty year gold bonds, dated December 1, 1911;

And a hearing having been duly held, and it appearing to the Commission that the money to be secured by the issue of $600,000 face value of said bonds is necessary and reasonably required by said company for the discharge of its obligations, and the acquiring of rights of way and other property, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole, or in part, reasonably chargeable to operating expenses or income,

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by Northern Electric Railway Company– Marysville and Colusa Branch—of $600,000 face value

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of first mortgage, thirty-year sinking fund gold bonds, bearing interest at the rate of five per cent per annum, payable semiannually on the first day of each June and December, beginning on the first day of June, 1912, said bonds to be dated the first day of December, 1911, and to be numbered from 151 to 750, both inclusive, and to be issued under and in pursuance of the terms of a mortgage and deed of trust dated the first day of December, 1911, executed by Northern Electric Railway Company—Marysville and Colusa Branch—to Mercantile Trust Company of San Francisco, a copy of which said mortgage and deed of trust is on file with the application herein, upon the following conditions, not otherwise:

1. The railway company shall sell the bonds hereby authorized so as to net said company not less than 85 per cent of the face value thereof, plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

For the acquisition of rights of way and terminal properties.

The construction of a standard guage commercial road for the transportation of passengers, freight, mail, baggage and express over the route described in application and exhibits attached thereto, to be operated by a third rail electric system and by the construction and erection of a combined railroad and highway bridge across the Sacramento river at Meridian, or the accomplishment of such part of the above purposes as may be possible with the money derived from the sale of the bonds hereby authorized, all of said purposes being more fully described in the application and exhibits attached thereto.

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of said bonds during the preceding month, the terms of conditions of such sale or other disposition, the moneys realized thereby and the use and application of such moneys.

4. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of July, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1912.

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DECISION NO. 136.

IN THE MATTER OF THE APPLICATION OF THE LINDSAY HOME TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO RAISE ITS EXISTING SUBURBAN RATE OF EIGHTEEN DOLLARS PER ANNUM TO THIRTY DOLLARS PER ANNUM.

Application No. 85.

Decided July 13, 1912.

In assuming responsibility for telephone service in a special area, a corporation should hold itself ready to take care of any legitimate and compensatory development of that utility at rates that are fair and under regulations that are mutually protective. Neither the interests of the public, the present subscribers or prospective subscribers, or of the operating company, can be adequately conserved by either rates or reductions that would unduly curtail rural development. Application denied.

G. C. Harris, for Lindsay Home Telephone and Telegraph Company.
G. S. Barry and *L. S. White*, protestants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

After due notice, this case came on for hearing at Lindsay, California, June 29, 1912. It appears from the application and the testimony heard, in conjunction with the investigations of the Commission that the Lindsay Home Telephone and Telegraph Company became the owner of a telephone exchange in the city of Lindsay on the first day of December, 1911, and that said purchase was made without a careful inventory and appraisal such as would ordinarily characterize such a transaction. As a result, the operating company finds itself the owner of a certain suburban line, over which a number of subscribers have been receiving suburban service at a rental of $1.50 per month or $18.00 per annum, fixed by the former owner of the exchange.

It appears further that, while the Lindsay Home Telephone and Telegraph Company is operating a telephone exchange in the city of Lindsay, presumably as an independent company, it is, as a matter of fact, the successor and assign of one, J. G. Kirkman, who formerly operated this exchange under what is known as a "Connecting Agreement" with The Pacific Telephone and Telegraph Company. This agreement is dated October, 1910, and is now in full force and effect as between The Pacific Telephone and Telegraph Company and the Lindsay Home Telephone and Telegraph Company. Under the terms of this so-

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called "Connecting Agreement," The Pacific Telephone and Telegraph Company agree to refrain from rendering exchange telephone service in an area at Lindsay, Tulare County, California, comprised within a radius of six miles from the center thereof, except, however, the territory within such radius already sublicensed to Grant Kirkman of Exeter, California. Thus, we have in effect what amounts to a partition of territory between these two companies, and the Lindsay Home Telephone and Telegraph Company recognizes its duty as a public utility to adequately take care of the telephone development within its area. The Commission does not and will not take official cognizance of any such partition of territory, but in the absence of any adequate reason for interfering, it will insist that the legitimate development within the State, regardless of such artificial partition, be adequately taken care of by whatever company is undertaking, as a public utility, to serve the field.

Suburban service is a necessary and legitimate development of telephone service. It is a branch of rural development under which the telephone companies undertake to install and maintain the necessary facilities, regardless of the fact that the subscribers thereto are ordinarily understood to reside beyond the exchange radius of the particular exchange with which they may have connection.

The Lindsay Home Telephone and Telegraph Company has asserted in its application and in subsequent data that $2.50 per month is the standard charge for such a service. The interpretation of the word "standard," as here used, is a matter entirley subject to the discretion of the Railroad Commission, but, as a matter of general practice, the statement is not well founded. We find that the telephone companies very generally render an efficient rural service under circumstances in every way comparable to those developed at Lindsay under rates very much less that the rate here petitioned for. The Lindsay Home Telephone and Telegraph Company can only offer its subscribers connection with an exchange comprising some two hundred and fourteen stations, and in turn the value of this service which they are able to offer any subscribers, is, in a measure, dependent upon the extent of the service they are able to offer with rural subscribers. For any service whatever beyond the range of the six-mile radius referred to, they are under the necessity of imposing a charge over and above their exchange rentals. It follows that neither the interests of the public, the present subscribers or prospective subscribers, or of the operating company can be adequately conserved by either rates or restrictions that would unduly curtail rural development.

It appears from the testimony that the operating company would prefer to confine its investments to the city of Lindsay and take care

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of its rural development on what is known as the "farmer line" basis, which involves the investment in the necessary facilities by the prospective patron with a rate designed to cover the switching privileges and service. We believe, however, that in taking up the responsibility for telephone service in a special area they should hold themselves ready to take care of any legitimate and compensatory development of that utility at rates that are fair and under regulations that are mutually protective.

In view of these circumstances, and after a full consideration of the petition and evidence, the application is denied, and the following order issued:

ORDER.

1. Application having been made by the Lindsay Home Telephone and Telegraph Company for permission to raise its rate for suburban service from the existing rate of $1.50 per month or $18 per annum to $2.50 per month or $30 per annum, and the petition having been denied, it is ordered that the Lindsay Home Telephone and Telegraph Company, as a public utility operating a telephone exchange at Lindsay, California, purporting to take care of telephone development in an area comprised within the radius of six miles from the center thereof, that it shall continue its present suburban service, and that the rates therefor shall be $1.50 per month for wall telephones and $1.75 per month for desk set telephones, the company to build and maintain the lines necessary for such service.

2. That the Lindsay Home Telephone and Telegraph Company shall not be required to render rural telephone service at the above rates for less than five subscribers, or the equivalent thereof in rentals, to be paid by a lesser number, nor shall it be required to build new lines without a subscription averaging at least one subscriber to each half mile of construction required.

3. A maximum of twelve subscribers per suburban line shall be regarded as a working maximum and any additions thereto on an established line shall be made only as a temporary expedient pending the construction of additional line or lines, and shall be made only with the consent of at least half of the subscribers on the line involved.

4. This special order does not waive any of the requirements relative to the construction and filing of tariff publications, nor any of the provisions of the constitution of the State of California or the Public Utilities Act, nor is it to be interpreted as a general ruling on the value of rural telephone service, but applies only in the special instance considered.

The above opinion and order are hereby approved and ordered filed as the opinion and order of this Commission.

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DECISION No. 137.

IN THE MATTER OF THE APPLICATION OF THE MOUNT JACKSON WATER AND POWER COMPANY FOR PERMISSION TO RAISE WATER RATES TO CONSUMERS IN RIONIDO, SONOMA COUNTY, CALIFORNIA, AND ADJACENT TERRITORY.

Application No. 93.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

Whereas the Mount Jackson Water and Power Company filed with this Commission on June 7, 1912, an application, No. 93, to raise certain water rates therein specified in Rionido, Sonoma County, California, and adjacent territory; and

Whereas on June 28, 1912, the Mount Jackson Water and Power Company, through its attorney, Mr. A. F. Lemberger, wrote to this Commission requesting that the above entitled application be dismissed,

It is hereby ordered that the above entitled application be dismissed without prejudice to the applicants again filing such an application before this Commission.

Dated at San Francisco, California, this 13th day of July, 1912.

DECISION No. 138.

IN THE MATTER OF THE APPLICATION OF PORT COSTA WAREHOUSE AND DOCK COMPANY FOR PERMISSION TO CONTINUE ITS SPECIAL RATES FOR SHIPPERS.

Application No. 127.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

Whereas the Port Costa Warehouse and Dock Company, on the second day of July, 1912, filed with this Commission its petition asking permission to continue the special rates for shippers, such special rates being appended to the petition and made a part thereof; and

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Whereas this Commission has been unable to make the investigations into deviations from schedules of rates of public utilities which it may hereafter make, and is willing, in the mean time, to permit existing deviations to continue, if applied for, until the further order of the Commission;

It is hereby ordered that applicant's petition to continue the special rates, as shown on its schedule attached to the petition, is hereby granted until the further order of this Commission.

Dated at San Francisco, California, this 13th day of July, 1912.

DECISION NO. 139.

IN THE MATTER OF THE APPLICATION OF NORTH POINT DOCK WAREHOUSES FOR PERMISSION TO DEVIATE FROM SCHEDULE OF RATES FOR STORAGE HERETOFORE FILED WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 131.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

North Point Dock Warehouses having filed with this Commission its application dated July 2, 1912, for permission to charge and collect in certain specified cases, rates for storage lower than the rates as set forth in schedule heretofore filed with this Commission, and this Commission having as yet been unable to make the investigations which it may hereafter make on the question of deviations of public utilities from schedules of rates filed with this Commission, and this Commission being willing in the mean time to permit applicant to make the deviations specified in its applications;

It is hereby ordered that permission be and the same is hereby granted to the North Point Dock Warehouses until the further order of this Commission to charge and collect rates for storage of peanuts in sacks, canned goods in cases, sardines in cases and cement as specified in its application dated July 2, 1912, less than the charges shown in its schedule on file with this Commission.

Dated at San Francisco, California, this 13th day of July, 1912.

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DECISION NO. 140.

IN THE MATTER OF THE APPLICATION OF STOCKTON TERMINAL AND EASTERN RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS MAIN LINE TRACK AT GRADE ACROSS TWO PUBLIC HIGHWAYS IN SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 134.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

Stockton Terminal and Eastern Railroad Company having heretofore on July 8, 1912, filed with the Commission its application for permission to construct its main line track at grade across certain public highways as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossings with said public highways, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Stockton Terminal and Eastern Railroad Company to construct its main line track at grade across the following public highways in San Joaquin County, California, viz:

(1) The county road between stations 121+44 and 122+57, Bellota Division of said railroad, about 15.2 miles northeast of the town of Stockton and about 1,100 feet south of the crossing of said county road with the south fork of Calaveras River; said county road being between the tracts owned by E. H. Fine and Hunt Bros., as shown by the map of said railroad now on file in the office of the Commission.

(2) The county road between stations 176+17 and 176+47 of the Bellota Division of said railroad, about 16.3 miles northeast of the said town of Stockton; said county road being between the tracts owned by Geo. O. McQueen and J. Potter, as shown by the map of said railroad now on file in the office of the Commission.

Said grade crossings are hereby granted by the Commission subject to the following conditions:

(*a*) The expense of constructing said crossings and the cost of hereafter maintaining them in good and first-class condition for the safe and convenient use of the public shall be borne by the said railroad company.

(*b*) The said crossings shall be constructed of a width not less than

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twenty-four (24) feet at crown, and grades of approach shall not exceed eight (8) per cent.

(*c*) The railroad company shall construct said crossings out of suitable plank or guardrails which shall be filled in with suitable gravel or broken stone so that same will be safe for the passage of vehicles. The approach of said crossings shall also be ballasted with gravel or broken stone.

(*d*) The Commission reserves the right to make further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 13th day of July, 1912.

DECISION NO. 141.

IN THE MATTER OF THE APPLICATION OF SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK ACROSS RAYMOND AVENUE, IN THE CITY OF PASADENA, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 138.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation, having heretofore on July 11, 1912, filed with this Commission its application for permission to construct at grade a spur track as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that said railroad company has secured the necessary franchise or permit from the city of Pasadena, Los Angeles County, California, to construct said spur track at grade, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to San Pedro, Los Angeles and Salt Lake Railroad Company to construct a spur track at grade across Raymond avenue, in the J. S. Miller subdivision of the

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city of Pasadena, Los Angeles County, California, as shown by the map filed with said application, said crossing to be about 212 feet north of Glenarm street in said city, and said spur track to serve the plant of the Pasadena Canning Company, said crossing to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing said crossing, and the cost of hereafter maintaining same in a good and first-class condition for the safe and convenient use of the public, shall be borne by said railroad company.

(2) The railroad company shall provide a crossing not less than 48 feet in width, and shall ballast same in a good and substantial manner with gravel or broken stone.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 13th day of July, 1912.

DECISION No. 142.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK ACROSS A PUBLIC HIGHWAY AT GRADE NEAR DECOTO, ALAMEDA COUNTY, CALIFORNIA.

Application No. 141.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on July 12, 1912, filed with this Commission its application for permission to construct a spur track at grade across a public highway as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the condition hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern

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Pacific Company to construct its spur track at grade across the county road, a public highway in Decoto, Alameda County, California, said track to begin at engineering station 248+36.8 on the main line of the Central Pacific Railway, about six hundred thirty (630) feet west of the west end of the sidetrack of said company in said town of Decoto, thence extending westerly and on the south side of the main line of said railway crossing county road near the north end of "C" street and continuing in a southwesterly direction on to private property, as shown by the map attached to said application; said spur to be constructed to serve storage yard of the contracting firm of Willett & Burr on the south side of said county road, and to be constructed subject to the following conditions:

(1) The expense of crossing the said county road together with the cost of maintaining the same hereafter in good and first-class condition for the safe and convenient use of the public is to be borne by the said Southern Pacific Company.

(2) Said crossing is to be constructed of a width not to be less than fifty (50) feet and of grades of approach and exceeding eight (8) per cent and shall be ballasted with gravel, broken stone and protected with the necessary crossing plank or guard rails and made safe for the passage of vehicles and other road traffic at the expense of said railroad company.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 13th day of July, 1912.

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DECISION No. 143.

IN THE MATTER OF THE APPLICATION OF OCEAN SHORE RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK ACROSS A PUBLIC HIGHWAY AT GRADE IN SAN FRANCISCO, CALIFORNIA.

Application No. 143.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

Ocean Shore Railroad Company having heretofore on July 12, 1912, filed with this Commission its application for permission to construct a spur track at grade across a public highway hereinafter indicated, and it appearing to the Commission that this is a case in which a public hearing is not necessary, that the necessary permit or franchise has been secured from the city of San Francisco for the construction of said spur track, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Ocean Shore Railroad Company to construct its spur track at grade across Kansas street in the city of San Francisco, California, at a point about four hundred (400) feet south of the south side of Army street, as shown by the map of said crossing, filed with the application; said spur track to be constructed for the purpose of serving the proposed garbage incinerator plant of the city and county of San Francisco; said spur to be constructed subject to the following conditions, viz:

(1) Expense of crossing with Kansas street, together with the cost of maintaining same hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Ocean Shore Railroad Company.

(2) Said crossing shall be constructed of a width not less than fifty (50) feet and shall be ballasted with gravel, broken stone or other suitable material and provided with the necessary crossing plank or guard rails to make same safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 13th day of July, 1912.

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DECISION No. 144.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR A CERTIFICATE THAT THE PRESENT AND FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE AND WILL REQUIRE THE CONSTRUCTION OF AN EXTENSION OF ITS TRANSMISSION LINE TO THE CITY OF ROSEVILLE, PLACER COUNTY, CALIFORNIA.

Application No. 145.

Decided July 13, 1912.

REPORT OF THE COMMISSION.

Application having heretofore been made by the Great Western Power Company for a certificate as entitled above, and it appearing to the Commission that granting of this application will not interfere with any existing utility of the same kind within the territory involved, and that the public convenience and necessity of the said city of Roseville and the inhabitants thereof will be subserved by the granting of this application, and being fully advised in the premises, the Great Western Power Company is granted permission to extend its line as set out in the application and deliver power to the city of Roseville at a point to be determined by the authorities of the said city of Roseville, for distribution by said city of Roseville within the corporate limits of said municipality.

Dated at San Francisco, California, this 13th day of July, 1912.

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Decision No. 145.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO AND WOODLAND RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK AT GRADE ACROSS MAIN STREET IN THE CITY OF WOODLAND, YOLO COUNTY, CALIFORNIA.

Application No. 146.

Decided July 13, 1912.

Report of the Commission.

Sacramento and Woodland Railroad Company having heretofore filed with this Commission its application for permission to construct a spur track at grade across Main street, city of Woodland, Yolo County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary and that said company has obtained the necessary franchise or permit from the city of Woodland to construct said spur track, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Sacramento and Woodland Railroad Company to construct a spur track at grade across Main street in the city of Woodland, Yolo County, California, on the east side of the Southern Pacific Railroad and at a point about three hundred (300) feet east of said railroad, said spur to be extended on the south side of Main street on to land owned by the Diamond Match Company; said crossing to be made subject to the following conditions, viz:

(1) The entire expense of constructing said crossing and its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by the Sacramento and Woodland Railroad Company.

(2) Said crossing shall have a width of not less than fifty (50) feet. Said company shall provide and install the necessary crossing plank or guardrails for said crossing and ballast same with gravel or broken stone in a first-class manner for the safe and easy passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 13th day of July, 1912.

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DECISION NO. 146.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SIDETRACK ACROSS A PUBLIC HIGHWAY AT GRADE ONE MILE WEST OF THE TOWN OF WOODLAND, YOLO COUNTY, CALIFORNIA.

Application No. 149.

Decided July 15, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having on July 15, 1912, filed with this Commission its application for permission to construct at grade a sidetrack as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct sidetrack at grade across the county road about one (1) mile west of the town of Woodland, Yolo County, California; said sidetrack to lie on the west side of the main line of said company, beginning at its engineer's station 454.25, thence extending in a southerly direction parallel to said main line and about twenty (20) feet distant therefrom, at about three hundred and fifty (350) feet crossing over said county road, and connecting with the present spur track of said company, thus completing a sidetrack, as shown by the map filed with the application; said sidetrack is constructed to serve the warehouse of the Woodland Alfalfa Products Company. The Commission authorizes construction of said grade crossing subject to the following conditions:

(1) The entire expense to construct said crossing and its maintenance hereafter in a good and first-class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) Said crossing shall have a width of not less than twenty-four (24) feet and grades of approach not exceeding eight (8) per cent.

(3) Said company shall provide and install the necessary crossing plank or guardrails for said crossing and ballast same with gravel or broken stone in a first-class manner for the safe and easy passage of vehicles and other road traffic.

(4) The Commission reserves the right to make such further orders

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relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 15th day of July, 1912.

DECISION No. 147.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY, AN ELECTRICAL CORPORATION AND OF FRED B. MECHLING, FOR AN ORDER AUTHORIZING THE ASSIGNMENT AND TRANSFER BY THE SAID FRED B. MECHLING TO THE SAID THE SOUTHERN SIERRAS POWER COMPANY, OF A CERTAIN FRANCHISE AND FRANCHISE RIGHTS HERETOFORE GRANTED TO AND NOW HELD BY THE SAID FRED B. MECHLING, TO ERECT, CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRICAL SYSTEM CONSISTING OF POLES, TOWERS, WIRES, CONDUITS AND OTHER NECESSARY AND CONVENIENT APPARATUS FOR TRANSMITTING AND DELIVERING ELECTRIC ENERGY FOR LIGHT, HEAT, POWER AND OTHER PURPOSES WITHIN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

Application No. 115-A.

Decided July 20, 1912.

REPORT OF THE COMMISSION.

The Southern Sierras Power Company, a corporation, and Fred B. Mechling having filed with this Commission an application under the provisions of section 51 of the Public Utilities Act for an order of this Commission authorizing the assignment and transfer by said Mechling to said The Southern Sierras Power Company of that certain franchise heretofore and on the third day of April, 1912, granted to said Mechling by the city of Hemet by Ordinance No. 53 for the erection, operation and maintenance of an electrical system to supply electrical energy for light, heat, power and other purposes within the city of Hemet; and said franchise having been secured by said Mechling for said The Southern Sierras Power Company, the owner of the electrical

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distributing system within said city, with the knowledge of all parties concerned; and the Commission finding that this is a case in which a public hearing need not be held and that the application should be granted as prayed for;

It is hereby ordered that said application be and the same is hereby granted as prayed for.

Dated at San Francisco, California, this 20th day of July, 1912.

DECISION NO. 148.

IN THE MATTER OF THE APPLICATION OF PEOPLES WATER COMPANY FOR AN ORDER AUTHORIZING ISSUE OF NOTES AND ISSUE AND PLEDGE OF BONDS AS COLLATERAL SECURITY THEREFOR.

Application No. 129.

Decided July 20, 1912.

Consideration of the financial condition of applicant is unnecessary herein, as the only matter before the Commission is the refunding of debts created long prior to the effective date of the Public Utilities Act, and the result of granting the application will not be to in any wise add to the financial burdens of the company. Stipulation filed by applicant to the effect that in the event the application is granted all bonds pledged shall, as soon as the obligations secured are discharged, become, and by petitioner be treated, as unissued bonds, and shall not thereafter be pledged, sold or be otherwise issued without the Commission's authorization.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application for an order authorizing the issuance of promissory notes by applicant, the Peoples Water Company for the aggregate sum of $500,000, and authorizing applicant to issue and pledge as collateral security for the payment of said promissory notes Peoples Water Company general mortgage 5 per cent 30-year gold bonds in such amount as the Commission may direct.

Applicant is a corporation organized in 1906 and is now engaged in the business of supplying water to the cities of Albany and Richmond, in the county of Contra Costa, and portions of said county of Contra Costa adjacent thereto, and the cities of Alameda, Berkeley, Emeryville, Oakland, Piedmont, and San Leandro, in the county of Alameda, and portions of said county of Alameda adjacent thereto, and to inhabitants of said cities and portions of said counties.

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The conditions of the capitalization of the applicant is as follows:

STOCK.

Authorized—	
Preferred, 20,000 shares, par value $100 per share	$2,000,000
Common, 180,000 shares, par value $100 per share	18,000,000
Total	$20,000,000

All of which stock is issued and outstanding.

BONDS.

Authorized	$20,000,000
Bonds issued	6,746,000
Bonds pledged as collateral to secure the payment of $2,677,586.53 represented by promissory notes issued by applicant	6,259,000
Underlying bonds, to refund which an equal amount of above issue is held by trustee	5,600,000

Five hundred thousand dollars of the floating debt of applicant is due or about to become due and finding itself unable to pay this indebtedness applicant requests the Commission for permission to issue its promissory notes secured by bonds to refund this indebtedness. This indebtedness was created long prior to the going into effect of the Public Utilities Act and the money represented thereby was used for the purpose of acquiring property and making improvements in the plant of applicant.

Instead of selling its bonds applicant borrowed all necessary moneys and pledged its bonds as security therefor. It appears that it would have been impossible to obtain par value for the bonds if sold and by borrowing the money applicant was enabled to obtain necessary funds at an average cost of not to exceed 7 per cent per annum.

Applicant has filed with the Commission a stipulation by which it is agreed that in the event that this application be granted, all bonds pledged by petitioner pursuant to the order of the Commission, shall, as soon as the obligation for which such bonds are pledged has been discharged, become and by petitioner be treated as unissued bonds, and shall not thereafter be pledged, sold or be otherwise issued without the authorization or permission of the Railroad Commission.

A complete review or consideration of the financial condition of applicant is unnecessary at this time, as the only matter before the Commission is the refunding of debts created long prior to the effective date of the Public Utilities Act, and the result of granting the application will not be to in any wise add to the financial burdens of the company. Therefore, without passing upon the advisability of the methods used by applicant in securing funds or considering the entire financial condition of applicant, I recommend that the application be granted.

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The following form or order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Peoples Water Company for an order authorizing the issue by said company of promissory notes for the aggregate sum of $500,000, and authorizing said company to issue and pledge as collateral security for the payment of said promissory notes Peoples Water Company general mortgage 5 per cent 30-year gold bonds dated January 2, 1907, and secured by a mortgage and deed of trust executed by Peoples Water Company to Mercantile Trust Company of San Francisco.

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said notes secured by the pledge of said bonds as aforesaid, is necessarily and reasonably required by said company for the discharge of its obligations and that the purposes for which the proceeds derived from the issue of said promissory notes secured by the pledge of said bonds are to be used, are not in whole or in part reasonably chargeable to operating expenses or income.

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by Peoples Water Company of its promissory notes for the aggregate sum of $500,000, bearing interest at not to exceed 7 per cent per annum, and the Railroad Commission of the State of California does hereby authorize the issue by Peoples Water Company of Peoples Water Company general mortgage 5 per cent 30-year gold bonds in an amount not to exceed the face value of $1,500,000, to bear numbers between 1 and 7,651 and between 13,250 and 19,501, under and in pursuance of the terms of a mortgage and deed of trust dated January 2, 1907, executed by Peoples Water Company to Mercantile Trust Company of San Francisco, a copy of which said mortgage and deed of trust is on file with the application herein, upon the following conditions, not otherwise:

1. Peoples Water Company shall realize the full face value of the promissory notes hereby authorized and the proceeds derived therefrom shall be used only for the purpose of paying its indebtedness, as specified in the application therein, and said promissory notes shall bear interest not to exceed 7 per cent per annum.

2. The bonds hereby authorized shall be issued and used solely as a pledge for securing the payment of the said promissory notes, and immediately upon the payment of said promissory notes or the discharge of said bonds or any part thereof from the obligation of said pledge, said bonds shall be returned to the treasury of Peoples Water Company and shall not thereafter be issued except upon the order of the Railroad Commission of the State of California.

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3. Said company shall keep true and accurate accounts showing the receipt and application in detail of the proceeds derived from the issuance of said promissory notes hereby authorized, and shall make a verified report thereof to the Commission, of the disposition of the bonds hereby authorized to be issued as collateral security for such promissory notes.

4. The authorization hereby given to issue said notes and said bonds shall apply only to notes and bonds issued by said company on or before the thirtieth day of October, 1912.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of July, 1912.

DECISION NO. 149.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE OVER THE TRACKS OF SOUTHERN PACIFIC COMPANY ON NINTH STREET, IN THE CITY OF CHICO, BUTTE COUNTY, CALIFORNIA.

Application No. 135.

Decided July 20, 1912.

REPORT OF THE COMMISSION.

Northern Electric Railway Company having heretofore on July 8, 1912, filed with this Commission its application for permission to construct its track at grade across the tracks of Southern Pacific Company on Ninth street, city of Chico, Butte County, California, between Orange street and Cedar street, as shown by the map and profile attached to the application; and it appearing to the Commission that Southern Pacific Company by its general manager, W. R. Scott, and Northern Electric Railway Company by its attorney, T. T. C. Gregory, have on this date filed a waiver of a hearing before the Commission on this application; and it appearing to the Commission that in pursuance of said waiver a hearing is not necessary, and that the Commission may issue an order granting the application; and it further appearing to the Commission that Northern Electric Railway Company has secured the necessary permit or franchise from the said city of Chico for the construction of its track upon Ninth street; and it further appearing that it is not reasonable nor practicable to avoid grade crossing at the

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proposed point of crossing of Northern Electric Railway Company with Southern Pacific Company on Ninth street in the said city of Chico, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Northern Electric Railway Company to construct its track at grade across the tracks of Southern Pacific Company on Ninth street between Orange street and Cedar street in the city of Chico, Butte County, California, in accordance with the map and profile submitted by Northern Electric Railway Company, subject to the following conditions, to wit:

(1) The crossing frogs for the grade crossings shall be furnished and installed and hereafter maintained in good and first-class condition for the safe operation thereover of trains and cars at the expense of Northern Electric Railway Company.

(2) The contract between Northern Electric Railway Company and Southern Pacific Company of date July 1, 1912, relating to the installation, operation, maintenance, and protection of the crossings is approved by the Commission in all things except as to section 4 of article VI relating to the stopping of cars and trains at the crossings prior to the installation of an interlocking device, and also as to such provisions in said contract as may not give the Commission full authority to approve plans for and regulate the construction, maintenance, and operation of any such device which may be installed.

(3) Until an interlocking device is constructed at the crossings in accordance with plans which the Commission shall approve and the device placed in operation under an order approving and authorizing the same, issued by the Commission, all trains and cars of both companies party to the crossings shall, before passing over same, come to a full stop within two hundred (200) feet thereof, and after giving proper signals, shall pass over same under full control.

(4) Any interlocking device which may hereafter be constructed either in accordance with the contract between Southern Pacific Company and Northern Electric Railway Company or under an order by the Commission shall be approved by the Commission under its order before it shall be placed in operation. Such interlocking device shall be maintained and operated subject to such rules and regulations as the Commission may issue governing in such matters.

(5) The terms and conditions specified in this order relating to said crossings and protection thereof shall hereafter be subject to such further revision and modification as to this Commission may seem right and proper, and this Commission reserves the right to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 20th day of July, 1912.

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DECISION No. 150.

IN THE MATTER OF THE APPLICATION OF THE DEPUE WAREHOUSE COMPANY FOR PERMISSION TO DEVIATE FROM SCHEDULE OF RATES FOR STORAGE FILED WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 153.

Decided July 20, 1912.

REPORT OF THE COMMISSION.

Depue Warehouse Company having filed with this Commission on July 16, 1912, its application for permission to charge and collect from J. F. Campbell for the storage of grain at its warehouse situated at Delevan, California, rate of $.75 per ton of 2,000 pounds for the season which is lower than the rate of $.80 per ton of 2,000 pounds for the first thirty days and $1.05 per ton of 2,000 pounds for the season as set forth in schedule heretofore filed with this Commission, and this Commission having as yet been unable to make the investigation which it may hereafter make on the question of deviations of public utilities from schedules of rates filed with this Commission, and this Commission being willing in the mean time to permit applicant to make the deviation specified in its application.

It is hereby ordered that permission be and the same is hereby granted to the Depue Warehouse Company until the further order of this Commission to charge and collect from said J. F. Campbell said rate of $.75 per ton per season for the storage of grain in its warehouse situated at Delevan, California.

Dated at San Francisco, California, this 20th day of July, 1912.

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DECISION NO. 151.

TYNDALE PALMER, OTAY WATER LEAGUE ET AL.
vs.
SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY. CITY OF SAN DIEGO, INTERVENOR.

Case No. 261.

Decided July 20, 1912.

Ordered, That the application of complainants requesting the Commission to obtain injunctions restraining respondent and the city of San Diego from completing the contemplated sale of the property of respondent be denied.

REPORT OF THE COMMISSION.

SUPPLEMENTAL APPLICATION FOR INJUNCTION.

Whereas the plaintiffs in the above entitled action, on March 23, 1912, filed with this Commission their complaint against the above named defendants, and the Commission set this case for hearing in San Diego on August 19, 1912; and

Whereas the city of San Diego, intervenor in the above entitled action, is to hold an election on August 13, 1912, to vote bonds for the purchase of the defendant water company; and

Whereas the complainants in the above entitled action, upon learning of this election, and believing it to be a violation of the Public Utilities Act of this State, filed with this Commission on July 15, 1912, a supplementary application, demanding that this Commission order its attorney to obtain, pursuant to section 75 of the Public Utilities Act, an injunction against both the defendant water company and the city of San Diego, restraining them from completing this contemplated sale of the property of the defendant water company; and

Whereas under the provisions of section 51 of the Public Utilities Act, such a sale as the one contemplated cannot be completed and made effective, but is, in fact, absolutely void without the consent of the Commission; and, furthermore, the Commission being of the opinion that, by virtue of this section of the Public Utilities Act, the defendant water company and the city of San Diego are incapable of doing the act sought to be enjoined; and, also, the Commission being of the opinion that since its consent is necessary to make such a sale valid, it can fully protect the interested public by granting or refusing such consent when application is made therefor;

It is hereby ordered that the application of the complainants in the

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above entitled action, ordering the Commission to obtain injunctions restraining the defendant water company and the city of San Diego from completing the contemplated sale of the property of the defendant water company, be denied.

Dated at San Francisco, California, this 20th day of July, 1912.

DECISION No. 152.

G. E. VELA, JOSEPH DATSON, W. O. GREEN, W. LUCOT
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 278.

Decided July 20, 1912.

REPORT OF THE COMMISSION.

Whereas on May 31, 1912, the plaintiffs in the above entitled action filed with this Commission their complaint against the above named defendant; and

Whereas on July 16, 1912, there was filed with this Commission a request from F. Alleyne Orr, Esquire, attorney for the plaintiffs in the above entitled action, that said action be dismissed,

It is hereby ordered that the above entitled action be dismissed without prejudice to the plaintiffs again filing a complaint upon the same subject-matter.

Dated at San Francisco, California, this 20th day of July, 1912.

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DECISION NO. 153.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK ACROSS CHESTNUT STREET, CITY OF SAN BUENAVENTURA, VENTURA COUNTY, CALIFORNIA.

Application No. 152.

Decided July 23, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on July 17, 1912, filed with this Commission its application for permission to construct at grade a spur track as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct its spur track at grade in the city of San Buenaventura, Ventura County, California, across Chestnut street at its intersection with Front street, on the north side of its main line in Front street, to the property of the Channel Commercial Company, as shown by the map attached to the application, subject to the following conditions:

(1) Southern Pacific Company shall construct said crossing and forever hereafter maintain same in good and first-class condition for the use of the public.

(2) Said crossing shall be of a length not less than the length of the present crossing of said company on Chestnut street, and shall be ballasted in a good and substantial manner with gravel or broken stone.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 23d day of July, 1912.

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DECISION No. 154.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY—MARYSVILLE AND COLUSA BRANCH—FOR PERMISSION TO CONSTRUCT ITS DOUBLE TRACK AT GRADE ON MARKET STREET AND ACROSS THIRTEEN STREETS IN THE CITY OF COLUSA, COLUSA COUNTY, CALIFORNIA.

Application No. 157.

Decided July 23, 1912.

REPORT OF THE COMMISSION.

Northern Electric Railway Company—Marysville and Colusa Branch—a corporation, having on July 20, 1912, filed with the Commission its application for permission to construct at grade its main line double track over and across certain public streets as hereinafter indicated in the city of Colusa, Colusa County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that said corporation has secured the necessary franchise or permit from the city of Colusa for the construction of said tracks; and it further appearing that it is not reasonable nor practicable to avoid grade crossings with said streets and that said application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Northern Electric Railway Company—Marysville and Colusa Branch—to construct its double main line track at grade on Market street, city of Colusa, Colusa County, California, beginning on the east line of "A" street in said city, thence crossing "A" street, First street, Second street, Third street, Fourth street, Fifth street, Sixth street, Seventh street, Eighth street, Ninth street, Tenth street, Eleventh street, and Twelfth street, and extending on Market street to the west line of blocks twenty-six (26) and thirty-eight (38) of said city, as shown by the map filed with the application, subject to the following conditions:

(1) The entire expense of constructing said double main line track on Market street and across the intersection of the streets hereinbefore named shall be borne by the said railway company.

(2) The railway company shall forever hereafter maintain the tracks in said streets and crossings herein authorized in good and first-class condition for the use of the public.

(3) The railway company shall at its own expense ballast all of said crossings with gravel or broken stone in a first-class and substantial

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manner for the safe and easy passage over same by vehicles and other road traffic.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 23d day of July, 1912.

DECISION NO. 155.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF ITS MAIN LINE TRACK AT GRADE ACROSS TWENTY-FOUR HIGHWAY CROSSINGS IN SOLANO, YOLO, AND CONTRA COSTA COUNTIES, STATE OF CALIFORNIA.

Application No. 158.

Decided July 23, 1912.

REPORT OF THE COMMISSION.

Oakland, Antioch and Eastern Railway, a corporation, having heretofore on July 22, 1912, filed with this Commission its application for permission to construct at grade its main line track across certain public highways as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing of said main line track with said highways and that said application shall be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby given to Oakland, Antioch and Eastern Railway to construct its main line track at grade across the following public highways in Solano, Yolo and Contra Costa

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counties, State of California, as shown by the maps and profiles of said crossings attached to the application, viz:

Crossing number.	Section.	Township.	Range.	Base and meridian.	County.	Exhibit. (a)
1	16	3 North	1 East	M. D. B. & M.	Solano	B— 1
2	4 and 9	3 North	1 East	M. D. B. & M.	Solano	B— 2
3	4 and 9	3 North	1 East	M. D. B. & M.	Solano	B— 3
4	32	4 North	1 East	M. D. B. & M.	Solano	B— 4
5	20 and 17	4 North	1 East	M. D. B & M.	Solano	B— 5
6	4	4 North	1 East	M. D. B. & M.	Solano	B— 6
7	33 and 34	4 North	1 East	M. D. B. & M.	Solano	B— 7
8	13 and 14	5 North	1 East	M. D. B. & M.	Solano	B— 8
9	12 and 13	5 North	1 East	M. D. B. & M.	Solano	B— 9
10	6	5 North	2 East	M. D. B. & M.	Solano	B—10
11	31 and 32	6 North	2 East	M. D. B. & M.	Solano	B—11
12	29	6 North	2 East	M. D. B. & M.	Solano	B—12
13	28 and 29	6 North	2 East	M. D. B. & M.	Solano	B—13
14	21	6 North	2 East	M. D. B. & M.	Solano	B—14
15-15A	16 and 15	6 North	2 East	M. D. B. & M.	Solano	B—15
16	10 and 15	6 North	2 East	M. D. B. & M.	Solano	B—16
17	10 and 11	6 North	2 East	M. D. B. & M.	Solano	B—17
18	2	6 North	2 East	M. D. B. & M.	Solano	B—18
19	36 and 25	7 North	2 East	M. D. B. & M.	Solano	B—19
20	25 and 30	7 North	2 East	M. D. B. & M.	Between Solano and Yolo	B—20
21 and 21A	8, 17 and 9	7 North	2 East	M. D. B. & M.	Yolo	B—21
22	10	2 North	1 West	M. D. B. & M.	Contra Costa	B—22

(a) As per exhibits (maps and profiles) attached to the application.

The construction of the twenty-four (24) grade crossings above described is authorized by the Commission subject to the following conditions:

(1) The entire expense to construct the crossings and to forever hereafter maintain them in good and first-class condition for the use of the public shall be borne by Oakland, Antioch and Eastern Railway.

(2) The grades of approach to said crossings shall in no case exceed eight (8) per cent; the width of said crossings for all first-class road shall be not less than twenty-four (24) feet and for all second-class road shall not be less than sixteen (16) feet.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 23d day of July, 1912.

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DECISION No. 156.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF SIDETRACKS ACROSS VENTURA STREET, MONO STREET AND KERN STREET IN THE CITY OF FRESNO, FRESNO COUNTY, CALIFORNIA.

Application No. 161.

Decided July 25, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on July 23, 1912, filed with this Commission its application for permission to construct at grade certain sidetracks as hereinafter indicated in the city of Fresno, Fresno County, California; and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing; and it further appearing that applicant has secured the necessary franchise or permit from the city of Fresno and that said application shall be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its tracks at grade across public streets in the city of Fresno, Fresno County, California, as follows:

Crossing No. 1. A sidetrack across Ventura street, between "H" street and "G" street, at a point about one hundred and twenty-five (125) feet south of the center line of the present main track of said company.

Crossing No. 2. A cross-over track across Ventura street, between "H" street and "G" street, at a point about one hundred and forty-five (145) feet south of the center line of the present main track of said company.

Crossing No. 3. A sidetrack across Mono street, between "H" street and "G" street, at a point about one hundred and twenty-five (125) feet south of the center line of the present main track of said company.

Crossing No. 4. A sidetrack across Kern street, between "H" street and "G" street, about one hundred and twenty-five (125) feet south of the center line of the present main track of said company.

All of said crossings to be located as shown on map attached to the application, and to be constructed subject to the following conditions:

(1) The entire expense of constructing said crossings and maintain-

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ing them hereafter in good and first-class condition for the use of the public shall be borne by Southern Pacific Company.

(2) The crossings shall be ballasted with first-class broken stone or gravel ballast and provided with the necessary plank or guardrails and otherwise constructed for the safe and easy passage of vehicles.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 25th day of July, 1912.

DECISION No. 157.

IN THE MATTER OF THE APPLICATION OF MOUNT WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING SPECIAL DEVIATIONS FROM METER POWER CONTRACT WITH CITY OF LINDSAY.

Application No. 42.

Decided July 26, 1912.

REPORT OF THE COMMISSION.

Mount Whitney Power and Electric Company having heretofore filed with this Commission its application for permission to make a five (5) year meter power contract with the city of Lindsay, Tulare County, for a fifteen (15) horsepower electric motor, to be used on the sewer system of said city of Lindsay on the south half of the south half of the southeast quarter of the northeast quarter of section 3, township 20 south, range 26 east, M. D. B. and M., in Tulare County, in accordance with a meter power contract of said company, with the elimination of the provision for a minimum monthly charge of installed motor capacity, and this Commission having heretofore on the thirteenth day of May, 1912, made its order granting said application until the further order of this Commission; and,

Mount Whitney Power and Electric Company having now made its request in writing that said order be modified so as to provide for the further elimination from said contract of paragraphs 14 and 15 thereof, providing for a lien on the motor and plant, and also for the granting

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of certain rights of way, neither of which covenants the city of Lindsay may lawfully enter into.

It is hereby ordered that the order heretofore made in the above entitled proceeding be and the same is hereby amended in accordance with the request contained in said written application, until the further order of this Commission.

Dated at San Francisco, California, this 26th day of July, 1912.

DECISION NO. 158.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE UNDER SECTION 50*a* OF THE PUBLIC UTILITIES ACT THAT THE PRESENT AND FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE AND WILL REQUIRE THE CONSTRUCTION OF TRANSMISSION AND DISTRIBUTION LINES FOR ELECTRIC SERVICE IN THE COUNTIES OF PLUMAS, BUTTE, YUBA, SUTTER, COLUSA, GLENN, YOLO, SOLANO, CONTRA COSTA, ALAMEDA, SACRAMENTO, SAN JOAQUIN, AND CALAVERAS AND AN EXTENSION IN AND THROUGH SAID COUNTIES OF THE EXISTING LINES OF SAID CORPORATION; AND FOR A PRELIMINARY ORDER UNDER SECTION 50*c* OF SAID ACT DECLARING THAT THE COMMISSION WILL HEREAFTER UPON APPLICATION THEREFOR AFTER SAID CORPORATION HAS OBTAINED FRANCHISES AND PERMITS IT CONTEMPLATES SECURING, BUT WHICH HAVE NOT YET BEEN GRANTED TO IT, ISSUE THE NECESSARY CERTIFICATE OR CERTIFICATES THAT THE PRESENT OR FUTURE WILL REQUIRE THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED BY SAID CONTEMPLATED FRANCHISES AND PERMITS TO CONSTRUCT, MAINTAIN AND OPERATE TRANSMISSION AND DISTRIBUTION LINES AND EQUIPMENT IN SAID COUNTIES.

Application No. 64.

Decided July 26, 1912.

REPORT OF THE COMMISSION.

Western States Gas and Electric Company having filed with this Commission its petition for a rehearing in the proceeding entitled as

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above in so far as affects the districts surrounding the city of Stockton at a constant distance of two (2) miles from the city limits of said city, and good cause appearing,

It is hereby ordered that said petition be and the same is hereby granted and that the rehearing in said matter be held before Commissioner Thelen, in the office of the Commission, on August 8, 1912, at 10 o'clock a. m.

Dated at San Francisco, California, this 26th day of July, 1912.

DECISION NO. 159.

IN THE MATTER OF THE APPLICATION OF INLAND NAVIGATION COMPANY FOR ORDER AUTHORIZING ISSUANCE OF STOCK.

Application No. 105.

Decided July 26, 1912.

REPORT OF THE COMMISSION.

Inland Navigation Company having heretofore filed with this Commission its petition asking for a rehearing in the proceeding entitled as above, and good cause appearing,

It is hereby ordered that said petition be and the same is hereby granted, and that the hearing be held before Commissioner Loveland, in the office of the Commission, on the first day of August, 1912, at 9.30 o'clock a. m.

Dated at San Francisco, California, this 26th day of July, 1912.

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DECISION NO. 160.

IN THE MATTER OF THE PETITION OF DELTA IRRIGATED LAND COMPANY TO ISSUE STOCK AND STOCK CERTIFICATES, NOTES AND OTHER EVIDENCES OF INDEBTEDNESS, AND TO MORTGAGE PROPERTY FOR THE PURPOSE OF THE ACQUISITION OF PROPERTY AND FOR THE CONSTRUCTION, COMPLETION, EXTENSION AND IMPROVEMENT OF ITS FACILITIES AND FOR THE IMPROVEMENT AND MAINTENANCE OF ITS SERVICE.

Application No. 11.

Decided July 27, 1912.

REPORT OF THE COMMISSION.

Upon written request of applicant on file with this Commission, the above entitled application is hereby dismissed without prejudice.

Dated at San Francisco, California, this 27th day of July, 1912.

DECISION NO. 161.

IN THE MATTER OF THE APPLICATION OF POMONA VALLEY TELEPHONE AND TELEGRAPH UNION FOR ORDER AUTHORIZING AND DIRECTING THAT SUITABLE CONNECTIONS BE MADE BETWEEN THE TELEPHONE LINES OF THE SAID POMONA VALLEY TELEPHONE AND TELEGRAPH UNION AND THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR THE PURPOSE OF TRANSFERRING TOLL MESSAGES, AND THAT TOLL SERVICE BE GIVEN IN ACCORDANCE WITH A CERTAIN PROPOSED AGREEMENT PROVIDING FOR THE SALE OF THE GOOD WILL AND BUSINESS OF THE PACIFIC COMPANY TO THE POMONA COMPANY.

Application No. 111.

Decided July 30, 1912.

Held. That the consolidation of telephone exchanges in Pomona is for the public interest, and the connection of this consolidated exchange with the long distance

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or toll service of the Pacific Telephone and Telegraph Company must work to the advantage of the subscribers. Provisions of proposed contract between applicants reviewed and rulings made thereon.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by the Pomona Valley Telephone and Telegraph Union, joined in by the Pacific Telephone and Telegraph Company, for an order authorizing and directing that suitable connections be made between telephone lines of the Pomona Valley Telephone and Telegraph Union and the Pacific Telephone and Telegraph Company for the purpose of transferring toll messages between the exchange system of the former and the toll system of the latter, and that toll service be given in accordance with the terms of a proposed contract, copy of which was submitted with the application, and that the consent of the Commission be given to the execution of said contract between the Pomona Valley Telephone and Telegraph Union and the Pacific Telephone and Telegraph Company.

Under this agreement it is proposed by the Pacific Company to terminate the exchange service now given citizens of Pomona by it and to abandon this field to the Pomona Company.

It is the proposed action of the Pacific Company in abandoning this service now given by it that makes this matter the proper subject of an order, as ordinarily this Commission will not pass upon contracts or arrangements between public utilities except in cases in which, under the Public Utilities Act, the Commission's approval is necessary. However, a withdrawal from a field now served by a utility is a disposition of its plant or system, or a part thereof, within the meaning of the Public Utilities Act, and can not be done without the sanction of the Commission.

The Pomona Valley Telephone and Telegraph Union is now rendering a long distance or toll service by virtue of contract relations with the United States Long Distance Telephone and Telegraph Company. This service is valuable to the public, and it should not be disturbed.

Under the proposed consolidation the Pacific Telephone and Telegraph Company withdraws from the local field and the subscribers of that company will suffer no loss of service and no inconvenience, as they will have access to the exchange service of the Pomona Valley Telephone and Telegraph Union, and the subscribers to the consolidated exchange service will have access to two long distance systems instead of one, as in the past. To insure efficient service to the subscribers certain standards of service should be kept and maintained and these standards have been embodied in conditions attached to the granting of this order.

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It appears that the consolidation of the exchanges in Pomona is for the public interest and the connection of this consolidated exchange with the long distance or toll service of the Pacific Telephone and Telegraph Company must work to the advantage of the subscribers, and therefore should be approved.

The contract filed with this application and for which the approval of this Commission is sought was probably prepared before the effective date of the Public Utilities Act, as it contains provisions which, if effective, would determine matters now properly within the jurisdiction of the Commission. Paragraph 4 of that proposed contract provides in effect that all telephone messages originating in the Pomona exchange shall be routed over the Pacific Company's line where the party called for has a telephone connection with such line, unless otherwise requested by the subscriber or unless other routing be agreed to by the Pacific Company. Manifestly this is a question of service over which the Commission has control and the assent to this provision at this time would mean that in advance of any investigation we had given our approval to an exclusive routing over the Pacific Company. Paragraph 5 provides that a commission of 15 per cent of all tolls collected by the said Pomona Company on messages originating on the lines of the Pomona Company and going over the lines of the Pacific Company shall go to the Pomona Company and the remaining 85 per cent of such messages shall go to the Pacific Company. The Commission has not as yet determined whether this division of revenue as between the local exchange and the toll service is fair, and, with the understanding that the approval of this clause will not in the future bind the Commission in any consideration of this or kindred matters, I am not disposed to oppose the approval of this part of the contract. Paragraph 6 also provides for the exclusive connection between the Pacific and the Pomona Company and the United States Long Distance Company, and provides a penalty of $50,000 to be paid by the Pomona Company in the event that it connects with any company other than those named. For the reasons heretofore stated, the Commission should not give its assent to this clause of the contract. Paragraph 7 provides penalties for the failure to carry out the provisions in the clauses to which the assent of the Commission should not be given, and, therefore, paragraph 7 should not be approved. Paragraph 10 provides that the Pacific Company shall have the prior right of purchase of the Pomona plant upon terms equally as favorable as those offered to any other prospective purchaser. Considering the fact that it will be necessary at the time of any sale of the Pomona plant that this Commission give its consent thereto, based upon an investigation, it would be improper for the Commission to assent to the right of the

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Pacific Company to purchase as against any other proposed purchaser at a time long in advance of any sale of this plant. Paragraph 11 contains an agreement by the Pacific Company that it will not enter and operate a telephone service in certain territory which is specifically described in this paragraph. The power has been given the Railroad Commission to compel extension of service by a utility, and the approval of this paragraph at this time by the Commission will be the approval of a declaration by a company that it would not extend its service into certain territory. Paragraph 16 provides for a termination of the contract upon thirty days' notice by either party. This might be construed to mean that either party had the right upon thirty days' notice to disconnect the long distance from the exchange service, and as the power to determine whether or not such disconnection shall be made is clearly vested in this Commission, this paragraph is objectionable. The other paragraphs of this contract are without objection, and I recommend, with the objectionable paragraphs as named eliminated, the contract be approved.

With the exception of those clauses in the contract to which I have called attention, and which I recommend be not approved, I recommend that the application be granted.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by the Pomona Valley Telephone and Telegraph Union for an order authorizing and directing that suitable connections be made between the telephone lines of the Pomona Valley Telephone and Telegraph Union and the Pacific Telephone and Telegraph Company for the purpose of transferring toll messages and that toll service be given in accordance with the terms and provisions of a form of contract filed with the application and that the consent of this Commission be given to the execution and carrying into effect of such contract, under which contract it is proposed by the Pacific Company to terminate the exchange service now given citizens of Pomona by it, and to abandon this field to the Pomona Company, and the Pacific Telephone and Telegraph Company having joined in said application, and a hearing having been duly held, and it appearing to the Commission that it would be to the public interest that said application with certain exceptions be granted,

It is hereby ordered by the Railroad Commission of the State of California as follows:

1. That permission is hereby given for the withdrawal of the Pacific Telephone and Telegraph Company from the local exchange field of

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Pomona, California, and for the interchange of service between the exchange system of the Pomona Valley Telephone and Telegraph Union and the toll system of the Pacific Telephone and Telegraph Company.

2. That the contract submitted with said application is hereby approved, with the exception of paragraphs 4, 5, 6, 7, 10, 11, and 16, which said last mentioned paragraphs are expressly disapproved. With the elimination of said disapproved paragraphs consent is hereby given to the execution of said contract by the Pomona Valley Telephone and Telegraph Union and the Pacific Telephone and Telegraph Company.

This order is made subject to the following conditions:

(*a*) Long distance toll service shall be maintained and be at all times available to all present or future telephone subscribers who may be subscribers to the consolidated exchange area to be rendered in Pomona exchange, Pomona, California, so that any subscribers may have incoming service from or outgoing service to the toll system or systems of the Pacific Telephone and Telegraph Company and the United States Long Distance Telephone and Telegraph Company. It shall be optional to the subscribers over which toll system their messages shall be sent.

In particular both toll companies shall be on a parity in the matter of the physical conditions under which the interchange of service between their respective toll systems and the local exchange systems shall be effected. The physical connections between the long distance apparatus and equipment of both toll systems and the local plant shall be made in a manner suitable to carrying on of such long distance business to the advantage of the respective long distance operating companies.

All messages, both incoming and outgoing, over the respective long distance lines shall be handled with equal promptness by the operators of the local company. Both long distance companies shall have the right to designate the name by which the respective services shall be called, providing that such names do not violate the accepted significance of terms ordinarily used in defining such service.

If new or additional equipment or alteration in equipment is made by the local company, both long distance companies shall be given the information at the earliest possible date, and both shall be permitted to do anything necessary to bring their respective equipment into proper relation with the proposed change, and no delays or hindrances shall be made by the local company in this connection with respect to either long distance company in the event that either shall find it necessary or advantageous to make changes in or additions to their own apparatus.

The rentals charged the subscribers of the Pomona exchange, and

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the service given and facilities afforded by the Pomona Valley Telephone and Telegraph Union, shall conform with the following requirements:

The minimum rate for the several classes of service now prevailing in the system of the Pomona Valley Telephone and Telegraph Union, and the maximum radius of service under the said several rates now existing in the said system, shall, in the several instances, prevail as the minimum rate and the maximum radius until the further order of this Commission.

The average time for answering line signals shall not exceed 4.3 seconds.

The percentage of line signals answered in ten seconds or under shall not be less than 95 per cent.

The average time for the disconnection of calls shall not exceed four seconds.

The percentage of disconnections within eight seconds shall not be less than ninety-five per cent.

The calls not affected by operators' errors shall not be less than ninety-eight per cent.

The above service requirements shall apply under normal conditions, and at no times shall the ratio of operators to traffic handled be less than is necessary to the maintenance of these standards under normal conditions.

The proposed elimination of the exchange service rendered by the Pacific Telephone and Telegraph Company shall be completed within sixty days from the date of this order, and the availability of both toll systems to the subscribers of the consolidated exchange service shall be made available previous to such withdrawal from the local field by the Pacific Telephone and Telegraph Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of July, 1912.

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DECISION No. 162.

IN THE MATTER OF THE APPLICATION OF SANTA MARIA GAS AND POWER COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF FIFTY THOUSAND DOLLARS.

Application No. 126.

Decided July 30, 1912.

Permission given to applicant to sell bonds at par and to use proceeds for purposes specified. If applicant shall desire to utilize such bonds or a portion thereof as collateral to secure the repayment of moneys to be borrowed, applicant may do so after having secured this Commission's consent on verified letters stating the facts. Upon release of bonds so pledged they shall not again be used without the approval of the Commission.

Allen Chickering and *Paul M. Gregg*, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application of Santa Maria Gas and Power Company for an order authorizing an issue of bonds of the face value of $50,000, of which the proceeds are to be used for the purposes hereinafter specified.

Applicant secures natural gas from the Santa Maria oil fields in Santa Barbara County under leases from the Union Oil Company of California, the Pinal Oil Company and the Brookshire Oil Company and at present supplies the same to the cities and towns of Santa Maria, Betteravia and Guadalupe. Applicant's authorized capital stock is $250,000, divided into 2,500 shares of the par value of $100 each. Of this amount, 500 shares were issued as fully paid up in consideration of certain real estate, rights of way and franchises and $12,683.98 in cash and a second 500 shares were issued in pursuance of a resolution of the stockholders passed on March 13, 1912, in return for payments of $10 per share and promises to pay the remaining $90 in installments upon call of the board of directors, calls not to be made to exceed $10 per share in any one year subsequent to March 15, 1912. Applicant's property is subject to trust indenture dated April 15, 1907, to Title Guarantee and Trust Company, to secure an authorized bonded indebtedness of $250,000, evidenced by twenty-year six per cent bonds of the denomination of $500 each, interest payable semiannually. Of the bonds so authorized, bonds of the face value of $30,000 have heretofore been issued and are now outstanding. Applicant claims that its prop-

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erty, apart from rights of way and franchises, cost $127,624.28. Against this property there are outstanding bonds of the face value of $30,000, as aforesaid, bills payable in the amount of $17,500, accounts payable in the amount of $2,500 and meter deposit account amounting to $353.50.

Applicant now asks for an order authorizing the issue of bonds of the face value of $50,000, which bonds applicant proposes to sell at par. Arrangements have been practically perfected for the sale of all of these bonds at par. In case any of the bonds cannot be disposed of at par, applicant asks leave to use them as collateral to secure the remaining funds necessary for the purposes hereinafter specified. The purposes for which the proceeds of these bonds are to be used are to construct a pipe line north from the Santa Maria River through the towns of Nipomo and Berros to Arroyo Grande, with distributing systems and service connections in each of said three towns; also to erect an additional compressor and engine power at the applicant's station in the Santa Maria oil fields; also to refund a portion of applicant's floating indebtedness. The amounts of money necessary for these purposes are in greater detail as follows:

(*a*) Pipe line and distributing system:	
Ten miles of 4-inch pipe at 27½ cents, with 5 cents additional for laying	$17,160 00
Five miles of 4-inch pipe at 29 cents, with 5 cents additional for laying	8,976 00
Distributing system, with service connections in Nipomo and Berros	1,000 00
Distributing system with service connections in Arroyo Grande	5,000 00
	$32,136 00
To be raised from other sources	2,136 00
To be raised from sale of bonds	$30,000 00
(*b*) Compressor equipment:	
150-horsepower engine	$5,400 00
Freight on above	600 00
Sullivan two-stage class W. J. 16-10-14 compressor	1,865 00
Freight on above	135 00
Concrete foundations for engine and compressor, galvanized iron building, belting, pipe, connections, etc.	2,000 00
	$10,000 00

It is the intention to install this equipment in the oil fields and it will be powerful enough not merely to drive the natural gas to Arroyo Grande but also beyond, if this business should develop as expected.

(*c*) Refunding of existing obligations:	
To refund one-day note dated February 19, 1912, at 6 per cent, payable to Commercial Bank of San Luis Obispo	$7,500 00
To refund one-day note dated November 20, 1911, at 6 per cent, payable to Thos. B. Adam and R. E. Easton	2,500 00
	$10,000 00

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The proceeds of the foregoing notes were used to build what is known as the "River Line," extending northerly from Santa Maria to the Union Oil Company's heating plant and for other extensions and betterments.

Applicant has heretofore secured the necessary franchises from the counties of Santa Barbara and San Luis Obispo, and on July 17, 1912, was awarded a franchise in the city of Arroyo Grande, which franchise is the subject of Application No. 130 before this Commission.

I find that the amounts of money specified in the foregoing estimates are reasonably necessary for the purposes therein specified; that such purposes are proper and not in whole or in part reasonably chargeable to operating expense or to income, and that the amount of bonds as to which this Commission's permission is asked is reasonably necessary to raise the funds to carry out said purposes, and I accordingly recommend that the issue of bonds be authorized as prayed for.

I find that applicant should be commended for the thoroughness and fullness with which it has set forth in its application the facts on which this Commission is to base its decision. Applicants will find that a full and frank disclosure of their affairs will not merely expedite this Commission's decisions but will also materially aid the Commission in rendering decisions which shall be wise and just for all concerned.

I submit herewith the following form of order.

ORDER.

Application having been made to the Railroad Commission of the State of California by Santa Maria Gas and Power Company for an order authorizing the issue by said company of bonds in the amount of fifty thousand ($50,000) dollars, face value, said bonds to be payable on the fifteenth day of April, 1927, and to bear interest at six (6%) per cent per annum, payable semiannually and secured by a trust deed or mortgage upon all the property of the company, and a hearing having duly been held upon said application, and it appearing to the Commission that the money to be derived from the sale of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of its facilities and the discharge and lawful refunding of its obligations, as hereinafter in greater detail specified, and that the purposes for which said moneys are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered as follows:

(1) The Santa Maria Gas and Power Company is hereby authorized to issue one hundred (100) bonds of the face value of five hundred ($500) dollars each, bearing the numbers 61 to 160, inclusive, or so many thereof as may be necessary for the purposes hereinafter specified,

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maturing the fifteenth day of April, 1927, redeemable at any time after the fifteenth day of April, 1912, at $525 for each bond of the face value of $500, and all accrued interest, and to bear interest at six (6%) per cent per annum, payable semiannually, under and in pursuance of the terms of that certain trust indenture or mortgage heretofore and on the fifteenth day of April, 1907, made and executed by the said Santa Maria Gas and Power Company to Title Guarantee and Trust Company, as trustee, subject to the conditions following, and not otherwise, to wit:

(*a*) Santa Maria Gas and Power Company shall sell the bonds hereby authorized so as to net the said company not less than par besides interest accrued thereon. If applicant shall desire to utilize such bonds or a portion thereof as collateral to secure the repayment of moneys to be borrowed, applicant may do so after having secured this Commission's consent on verified letter stating the facts; but in such event, where such bonds or any of them shall have been released by the payment of said moneys or any portion thereof, they shall not again be used by applicant without first having applied for and secured this Commission's consent thereto.

(*b*) The proceeds from the sale of said bonds shall be applied to the following purposes only:

For the acquisition of property and the construction, completion, extension and improvement of facilities, described as follows: 15 miles of pipe line, and distributing system and service connections within Nipomo, Berros and Arroyo Grande, $30,000.

For the acquisition of property and the construction, completion, extension and improvement of facilities, described as follows: compressor equipment, including gas engine, compressor, concrete foundations, galvanized iron buildings, belting and pipe connections, $10,000.

For the discharge or refunding of obligations incurred for the acquisition of property, and the construction, completion, extension and improvement of facilities, as said obligations are set forth in the opinion which precedes this order, $10,000.

(2) Applicant shall keep separate, accurate and true accounts showing the disposition made of every bond hereby authorized to be issued and showing the receipt and application in detail of the proceeds of each such bond and on or before the twenty-fifth day of each month applicant shall make a verified report to the Commission stating the sale or other disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys and in these and all other respects applicant shall comply fully with the Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

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(3) The authority hereby given to issue bonds shall apply only to bonds issued by applicants prior to the thirtieth day of June, 1913.

(4) The effectiveness of this order is conditioned upon the payment by applicant of the minimum fee prescribed by section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of July, 1912.

DECISION NO. 163.

IN THE MATTER OF THE APPLICATION OF THE SANTA MARIA GAS AND POWER COMPANY FOR ORDER FOR EXERCISE OF RIGHT OR PRIVILEGE UNDER FRANCHISE SECURED FROM THE CITY OF ARROYO GRANDE.

Application No. 130.

Decided July 30, 1912.

Allen Chickering and *Paul M. Gregg*, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application by Santa Maria Gas and Power Company, under the provisions of section 50 of the Public Utilities Act, for permission to exercise the rights and privileges granted to applicant by the city of Arroyo Grande in ordinance granting franchise for the sale to the city of Arroyo Grande and the inhabitants thereof, of natural and artificial gas for light, heat, fuel, power and for such other purposes for which the same may be utilized. Application for the sale of such franchise was made to the city of Arroyo Grande on March 20, 1912, by R. E. Easton, and the franchise was thereafter sold to Santa Maria Gas and Power Company on July 10, 1912, and an ordinance was passed on July 17, 1912, awarding the franchise to Santa Maria Gas and Power Company.

The city of Arroyo Grande is at present not supplied with gas. Applicant has eighty-seven (87) prospective consumers in the city and

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expects materially to increase this number. For further details concerning the operations of applicant I would refer to this Commission's decision on Application No. 126.

I find that public convenience and necessity will be subserved by the grant of this application and for that reason recommend that the same be granted. I submit herewith a form of an order.

ORDER.

Santa Maria Gas and Power Company having heretofore filed with this Commission its application for an order permitting it to exercise the rights or privileges covered by ordinance granting franchise in the city of Arroyo Grande, which said ordinance was duly passed on July 17, 1912, and grants a franchise for the furnishing and sale to the city of Arroyo Grande and the inhabitants thereof, of natural and artificial gas for light, heat, fuel, power and for such other purposes for which the same can or may be utilized, and a hearing having been held on said application and the Commission finding that public convenience and necessity will be subserved by the granting thereof,

It is hereby ordered that said application be and the same is hereby granted.

Dated at San Francisco, California, this 30th day of July, 1912.

DECISION NO. 164.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS "D" STREET, CITY OF TURLOCK, STANISLAUS COUNTY, CALIFORNIA.

Application No. 167.

Decided July 30, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on July 29, 1912, filed with the Commission its application for permission to construct at grade a spur track across "D" street, city of Turlock, Stanislaus County, California; and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid a grade crossing at the proposed

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point of crossing; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct a spur track at grade across "D" street, in the city of Turlock, Stanislaus County, California, and on the east side of its main line track, said spur track to serve the warehouse of A. A. Caldwell, shown by the map filed with the application, subject to the following conditions:

(1) The entire expense of constructing said crossing and its maintenance hereafter in good and first class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) The crossing shall be ballasted with first-class broken stone or gravel ballast, and provided with the necessary crossing plank or guardrails, and otherwise constructed for the safe and easy passage of vehicles.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of July, 1912.

DECISION NO. 165.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS MAIN LINE TRACK AT GRADE ACROSS CERTAIN STREETS IN THE CITIES OF MODESTO, STANISLAUS COUNTY, AND STOCKTON, SAN JOAQUIN COUNTY, AND CERTAIN PUBLIC HIGHWAYS IN SAN JOAQUIN COUNTY, ALL IN THE STATE OF CALIFORNIA.

Application No. 95.

Decided August 2, 1912.

REPORT OF THE COMMISSION.

Tidewater Southern Railway Company having heretofore on July 31, 1912, filed with the Commission its application for permission to con-

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struct its main line track at grade across certain streets in the cities of Modesto, Stanislaus County, and Stockton, San Joaquin County, both in the State of California, and across certain public highways in San Joaquin County, California; and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing of said railway with said public streets and highways, and it further appearing to the Commission that Tidewater Southern Railway Company has secured the necessary franchises or permits from the cities of Modesto and Stockton, and that it is authorized by law to cross the public highways in San Joaquin County, California; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Tidewater Southern Railway Company to construct its main line track at grade as follows:

A. In the city of Modesto, Stanislaus County, California, and on Ninth street of said city, beginning at the south end of said Ninth street, thence extending northwesterly on said Ninth street crossing "A" street, "B" street, "C" street, "D" street, "E" street, "F" street, "G" street, "H" street, "I" street, "J" street, "K" street, "L" street and "M" street, up to the intersection of Ninth street with "N" street; thence along "N" street from its intersection with Ninth street, crossing Tenth street, Eleventh street and Twelfth street, to the intersection of "N" street with Needham street; thence across Needham street to Virginia avenue; thence north on Virginia avenue crossing Alice street, Wright street and Stoddard avenue, to the north city limits of the city of Modesto; all of the above as shown by the map of the city of Modesto attached to the application.

B. In the city of Stockton, San Joaquin County, California, on Pilgrim street, beginning at the south line of South street, thence north crossing South street, Clay street, Jackson street, Jefferson street, Anderson street, Worth street and Taylor street, up to the tracks of the Atchison, Topeka and Santa Fe Railway Company; also on Scotts avenue, beginning at the tracks of the Central California Traction Company constructed at the intersection of Scotts avenue and Pilgrim street, and on the east side of said tracks; thence easterly on Scotts avenue crossing Ophir street, Sierra Nevada street, East street, Fisher street and St. Johns street to the east end of Scotts avenue; all of the above as shown by the map of the city of Stockton attached to the application.

C. In San Joaquin County, California, as follows:

No. 1. Crossing with Sharps lane about 900 feet south of the south line of South street, city of Stockton, at about engineer's station 32.

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No. 2. Crossing with French Camp road near the center of section 8, township 1 south, range 7 east, and at about engineer's station 340.

No. 3. Crossing with Hogan road 30 feet south of the south line of French Camp road and on the line between sections 8 and 9, township 1 south, range 7 east, and at about engineer's station 254+55.

No. 4. Crossing with a public road in section 16, township 1 south, range 7 east, 20 feet south of the south line of French Camp road, and at about engineer's station 307+70.

No. 5. Crossing with a public road in section 15, township 1 south, range 7 east, 20 feet south of the south line of French Camp road and at about engineer's station 359+75.

No. 6. Crossing with a public road in section 23, township 1 south, range 7 east, 20 feet south of the south line of French Camp road and at about engineer's station 423.

No. 7. Crossing with a public road between section 24, township 1 south, range 7 east and section 30, township 1 south, range 8 east, 20 feet south of the south line of French Camp road at "Five Corners" and about engineer's station 503+73.

No. 8. Crossing with a public road on the line between sections 29 and 30 of township 1 south, range 8 east, 20 feet south of the south line of French Camp road and about engineer's station 570+48.

No. 9. Crossing with a public road between sections 31 and 32, township 1 south, range 8 east, 20 feet south of the south line of French Camp road and about engineer's station 636+10.

No. 10. Crossing with a public road between sections 3 and 4, township 2 south, range 8 east, 20 feet south of the south line of French Camp road and about engineer's station 697+03.

No. 11. Crossing with a public road between sections 2 and 3, township 2 south, range 8 east, 20 feet south of the south line of French Camp road, and about engineer's station 749+58.

No. 12. Crossing with a public road between sections 1 and 2, township 2 south, range 8 east, 20 feet south of the south line of French Camp road and about engineer's station 802+50.

No. 13. Crossing with a public road between section 1, township 2 south, range 8 east and section 6, township 2 south, range 9 east, 20 feet south of the south line of French Camp road and about engineer's station 855+42.

No. 14. Crossing with French Camp road on the line between sections 5 and 6, township 2 south, range 9 east, at about engineer's station 909+80.

No. 15. Crossing with French Camp road, 25 feet west of the west line of Farmington road in the town of Escalon, San Joaquin County, California, and about engineer's station 972+47.

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No. 16. Crossing with a public road known as "River Road" in section 17, township 2 south, range 9 east, about engineer's station 1106.

All of the above sixteen (16) crossings, Nos. 1 to 16, inclusive, to be located and constructed in accordance with the maps and profiles of same filed with the application, and

It is further ordered that the crossings with streets and public highways hereinbefore authorized shall be constructed subject to the following conditions, viz:

(1) The entire expense of constructing said crossings and their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Tidewater Southern Railway Company.

(2) The crossings with the streets in the cities of Modesto and Stockton above authorized shall at the time of construction be provided with the necessary plank and guardrails, and otherwise completed and rendered safe, for the use of the public. Within one (1) year after their completion said crossings shall be ballasted in a first-class manner with gravel or broken stone ballast and otherwise constructed to permit the safe and easy passage of vehicles and other road traffic. Said crossings shall also be further constructed and maintained in compliance with the provisions of the franchises or permits secured from the said cities of Modesto and Stockton.

(3) The crossings with the public highways in San Joaquin County, California, outside of the city of Stockton, shall be constructed of a width when measured at right angles to the center line of the highway, of not less than twenty-four (24) feet wide for first-class roads and not less than sixteen (16) feet wide for second-class roads, and all of said crossings shall be provided with grades of approach not exceeding eight (8) per cent. Where diagonal crossings are made with these public highways the width of crossing shall in all cases be sufficient to permit the easy and safe passage of two (2) vehicles. All of these crossings shall at the time of construction be provided with the necessary plank and guardrails, and filled in with sand or other convenient material to render same entirely safe for the passage of vehicles; and further, shall within eighteen (18) months after their completion, be ballasted with broken stone or gravel ballast and otherwise be placed in a first-class condition for the safe and convenient use of the public.

(4) Each of said crossings in San Joaquin County, outside of the city limits of the city of Stockton, shall be provided with a standard road crossing sign post of appropriate design having cross-arms bearing the legend on each side "Railroad Crossing—Look Out for Cars," the letters of same to be not less than six (6) inches in height.

(5) The Commission reserves the right to make such further orders

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relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 2d day of August, 1912.

DECISION No. 166.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER AUTHORIZING IT TO DISCONTINUE ALL IRREGULAR AND DISCRIMINATORY EXCHANGE RATES AND TO APPLY TO ALL SUBSCRIBERS THE STANDARD RATES IN EFFECT AT ITS VARIOUS EXCHANGES ON OCTOBER 10, 1911.

Application No. 132.

Decided August 8, 1912.

REPORT OF THE COMMISSION.

The Pacific Telephone and Telegraph Company having filed with this Commission its written request that the application entitled as above be dismissed,

It is hereby ordered that said application be and the same is hereby dismissed.

Dated at San Francisco, California, this 2d day of August, 1912.

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DECISION No. 167.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS LOCUST STREET AND LOCKEFORD STREET IN THE CITY OF LODI, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 168.

Decided August 2, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company having heretofore on July 29, 1912, filed with the Commission its application for permission to construct at grade a spur track across Locust and Lockeford streets in the city of Lodi, San Joaquin County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct a spur track at grade across Locust and Lockeford streets between Sacramento street and Main street in the city of Lodi, San Joaquin County, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing said crossings and the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) The crossings shall be ballasted with first-class broken stone or gravel ballast and provided with the necessary crossing plank or guardrails, and otherwise constructed for the safe and easy passage of vehicles.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 2d day of August, 1912.

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DECISION NO. 168.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING IT TO EXERCISE THE FRANCHISES HERETOFORE ACQUIRED BY IT AUTHORIZING THE DISTRIBUTION OF GAS IN THE CITY OF PORTERVILLE, THE CITY OF LINDSAY, AND THE COUNTY OF TULARE, ALL IN THE STATE OF CALIFORNIA.

Application No. 172.

Decided August 2, 1912.

REPORT OF THE COMMISSION.

Central California Gas Company having filed with this Commission its application for an order authorizing it to exercise the franchise rights and privileges granted by Ordinance No. 134 of the city of Porterville, Ordinance No. 44 of the city of Lindsay and Ordinance No. 125 of the county of Tulare, and this Commission having heretofore made its order declaring that it would thereafter, upon application, issue its certificate after applicant should have obtained said franchises, and it appearing to this Commission that this is a case in which it is not necessary to hold a hearing,

It is hereby ordered that said application be and the same is hereby granted.

Dated at San Francisco, California, this 2d day of August, 1912.

DECISION NO. 169.

IN THE MATTER OF THE APPLICATION OF THE HALF MOON BAY LIGHT AND POWER COMPANY FOR PERMISSION TO FURNISH POWER AT LESS THAN ITS REGULAR SCHEDULE OF RATES.

Application No. 122.

Decided August 6, 1912.

REPORT OF THE COMMISSION.

Half Moon Bay Light and Power Company having heretofore filed with this Commission its application for permission to charge to

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E. B. & A. L. Stone Company a rate less than the regular schedule of rates for power on file with this Commission in accordance with contract between applicant and E. B. & A. L. Stone Company, dated May 17, 1912, and this Commission being unwilling to approve individual contracts of this character without making the rate available to other members of the public who might bring themselves within the conditions which gave rise to the lower rate specified in such contract.

It is hereby ordered that said petition be and the same is hereby dismissed, but that applicant may file with this Commission as a rate the lower rate specified in said contract, said rate to be available to all members of the public who can comply with its conditions, and that thereupon such rate shall become effective on one day notice.

Dated at San Francisco, California, this 6th day of August, 1912.

DECISION NO. 170.

IN THE MATTER OF THE APPLICATION OF THE HALF MOON BAY LIGHT AND POWER COMPANY FOR PERMISSION OR CERTIFICATE TO OPERATE UNDER FRANCHISE OF APRIL 1, 1912.

Application No. 27.

Decided August 7, 1912.

A public utility established in a territory and giving good and adequate service at reasonable rates, voluntarily given to all who apply and not made to forestall prospective competition, is entitled to protection, that protection being as much in the interest of the public as of the utility.

A successor company may not in the circumstances of this case disclaim responsibility for inadequate and unsatisfactory service furnished by its predecessor, an established company in the territory now proposed to be served by applicant. If there is anything in priority, the advantage lies with the applicant which had completed construction of its distribution lines two days before the Pacific Gas and Electric Company appeared on the field.

John O. McElroy, Guy C. Earl and *Chaffee Hall*, for applicant.
C. P. Cutten, for protestant, Pacific Gas and Electric Company.

REPORT OF THE COMMISSION.

LOVELAND and THELEN, *Commissioners.*

On April 29, 1912, Half Moon Bay Light and Power Company, a corporation, filed an application asking for permission or certificate to

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operate under a franchise which was granted to J. J. Gomes on April 1, 1912, by the board of supervisors of the county of San Mateo, State of California, by Ordinance No. 253, in a territory known and described as "The Jefferson School District of San Mateo County, State of California." This franchise is alleged to have been granted to Gomes for applicant. The applicant's line in the Jefferson School District was completed prior to the passage of said ordinance under an oral permit alleged to have been obtained from the board of supervisors of San Mateo County on February 5, 1912.

On July 31, 1912, applicant filed an amended application alleging, in addition to the allegations contained in the original application, that before the twenty-third day of March, 1912, said applicant had completed its main line, through said Jefferson School District, with description in detail of the route of said power and lighting line, setting forth the character of said line, competition anticipated, etc. At the time set for the hearing of this application, to wit, August 2, 1912, the Pacific Gas and Electric Company of San Francisco, successors to the South San Francisco Power and Light Company, asked and was granted permission to file its protest against the granting of said application.

The issues being thus joined, testimony was offered by applicant that it had constructed and now desired to operate a line for the purpose of transmitting and distributing electric current and electric energy for light, heat and power in said San Mateo County, California, from and including the town of Purissima north to the southerly boundary line of the city and county of San Francisco, excluding Daly City, serving the towns along said line, and the agricultural sections and residences adjacent thereto, diverging a short distance south of said southerly line of the city and county of San Francisco and proceeding eastward through said Jefferson School District, in said county of San Mateo. That portion of the territory to be served by the Half Moon Bay Light and Power Company described as from Purissima northerly along the coast to the southerly line of the city and county of San Francisco had not previously been served with gas or electric current for heat, light and power by any public utility company, except the South San Francisco Power and Light Company, which served a portion of the Jefferson School District up to March 8, 1912, on which day it was absorbed by the Pacific Gas and Electric Company.

Applicant alleges and offered testimony in support of such allegations, that the service given by the South San Francisco Power and Light Company was inadequate and inefficient. Protestant admits that it was found necessary to make extensive improvements after it acquired the property, but alleges that it is now able to give good

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service at reasonable rates. Applicant further alleges that the use of a large amount of power, in addition to that now installed in the Jefferson School District, could be promoted and that there are one hundred and forty-two families or persons not now using electricity for lighting purposes, most of whom applicant believes can be induced to become consumers. It is worthy of note that this testimony as to the one hundred and forty-two prospective consumers of electricity for lighting purposes was uncontradicted by protestant.

On May 7, 1912, applicant filed with this Commission the rates and charges which it proposed to make to its patrons, applicable alike to all the territory served by it. On July 31, 1912, being the day prior to this hearing, applicant filed an amended schedule specifying rates for domestic, commercial, commercial net rates and power service, such amended rates to apply only to Jefferson School District, effective by permission of the Commission August 1, 1912, and also on July 31st said applicant filed an amended schedule naming rates for power and agricultural purposes, effective by permission of the Commission August 8th, said amended schedule relating to rates for power and agricultural purposes was also limited in application to the Jefferson School District. These amended schedules show a substantial reduction in rates as compared with the rates filed May 7th, such reduction being justified as applicant contends by the greater density of population in Jefferson School District, and line-loss incidental to the greater distance over which the current must be carried to serve the line along the coast.

We may say in passing that we are not particularly impressed with these reasons for charging some patrons more than is charged to others. The testimony shows that the difference in the density of population is slight and the line-loss for the distance involved, which is only thirty miles, certainly can not be great. The rates filed May 7th were uniform, and the reduction now made in the rates for Jefferson School District appears to us to have been made for the purposes of this application and possibly to meet the competition.

The Pacific Gas and Electric Company, in support of its protest, sets forth that the Pacific Gas and Electric Company is in a position to serve and is serving the residents and users of electrical energy for heat, light and power in Jefferson School District adequately and satisfactorily, and that public convenience and necessity do not require the service of another company in that territory.

We have announced in the case of the Great Western Power Company, that a public utility, established in a territory and giving good and adequate service at reasonable rates, voluntarily given to all who apply and not made to forestall prospective competition, is entitled to protection, such protection being as much in the interest of the public

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as of the utility. We repeat here our belief in the soundness of this doctrine, and under ordinary circumstances and conditions would be inclined to be governed by that principle in the decision of this application. We wish, however, to draw attention to the following important considerations in this application:

1. The franchise was promised to Gomes and the line through the Jefferson School District was actually completed under that promise before the effective date of the Public Utilities Act. Applicant accordingly asks only for the approval of the franchise granted April 1, 1912, and does not find it necessary to apply under the provisions of section 50(a) of the Public Utilities Act for a certificate preliminary to the commencement of construction work.

2. The weight of testimony, we find, shows that the service given by the South San Francisco Power and Light Company was not adequate or satisfactory and that the Half Moon Bay Light and Power Company would have been entitled to a certificate of public convenience and necessity had such service not been improved. The Pacific Gas and Electric Company disclaims responsibility for the poor service of the South San Francisco Power and Light Company, and offered evidence to show that the service had been improved and the rates reduced since the Pacific Gas and Electric Company succeeded to the South San Francisco Power and Light Company on a date subsequent to that on which the applicant completed its line. If we admit this claim of the Pacific Gas and Electric Company that it is not responsible for the poor and inadequate service rendered by its predecessor and is to be judged only as of the day when it entered the field, that company is in the position of opposing the application of a company which had completed its line two days before the Pacific Gas and Electric Company appeared on the field. If there is anything in priority, the advantage lies with the applicant.

We find that public convenience and necessity require the exercise by applicant of the rights and privileges granted by said Ordinance No. 253 of the county of San Mateo, but only upon the following conditions:

1. Applicant shall first have filed with this Commission a good and sufficient conveyance transferring to it the rights granted by said ordinance to said J. J. Gomes. We can not grant to applicant authority to exercise a franchise which stands in the name of some one else.

2. Applicant shall first have filed with this Commission a revised schedule of rates extending to all the territory proposed to be served by it, the rates filed with this Commission on July 31, 1912, and made applicable only to the Jefferson School District. This Commission will not permit a utility to lower its rates for the purpose of a particular

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application pending before the Commission, while maintaining its higher rates elsewhere in territory similarly situated.

We submit herewith the following form of order:

ORDER.

Half Moon Bay Light and Power Company having filed with this Commission its application for a certificate authorizing it to exercise the rights and privileges granted to J. J. Gomes by Ordinance No. 253 of the county of San Mateo, dated April 1, 1912, granting a franchise for the purpose of transmitting and distributing electricity for heat and power and illuminating purposes in the Jefferson School District in San Mateo County, California, and a hearing having been held upon said application, and the Commission finding that public convenience and necessity require the exercise by applicant of the rights and privileges granted by said ordinance, but only upon the express conditions precedent hereinafter specified,

It is hereby ordered that said application be and the same is hereby granted, subject, however, to the following express conditions precedent:

1. Applicant shall first have filed with this Commission a good and sufficient conveyance transferring to it the rights granted by said ordinance to said Gomes.

2. Applicant shall first have filed with this Commission a revised schedule of rates extending to all the territory proposed to be served by it the rates filed with this Commission on July 31, 1912, and made applicable only to the Jefferson School District.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 7th day of August, 1912.

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DECISION No. 171.

IN THE MATTER OF THE APPLICATION OF SIERRA AND SAN FRANCISCO POWER COMPANY FOR CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED BY FRANCHISES OF THE TOWNS OF GILROY AND MORGAN HILL AND THE COUNTY OF SAN BENITO.

Application No. 178.

Decided August 8, 1912.

REPORT OF THE COMMISSION.

Sierra and San Francisco Power Company having filed with this Commission its application for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by Ordinance No. 94, of the county of San Benito, Ordinance No. 42 of the town of Morgan Hill and resolution of the city of Gilroy dated May 7, 1912, granting a permit, and this Commission having on May 11, 1912, rendered its decision on application No. 13, being application of Sierra and San Francisco Power Company for permission to complete the construction of an electric transmission line, in which decision this Commission rendered its order preliminary to the issue of a certificate of public convenience and necessity declaring that it would thereafter issue the desired certificate approving franchises to be secured from said towns of Gilroy and Morgan Hill and said county of San Benito for the transmission of electrical energy, but not for the distribution thereof in said towns and said county without a further investigation into the facts, and the Commission finding that public convenience and necessity will be subserved by the grant of this application to the extent to which the same is hereinafter granted,

It is hereby declared that public convenience and necessity require the exercise of the rights and privileges granted by the town of Morgan Hill by its said Ordinance No. 42, by the county of San Benito, by its said Ordinance No. 94, and by the town of Gilroy by its said permit dated May 7, 1912, in so far as said ordinances and permits relate to the transmission as distinguished from the distribution of electrical energy through said two towns and said county.

It is hereby expressly declared that this authorization does not apply to said franchises and said permit in so far as they relate to the dis-

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tribution of electrical energy within said two towns and within said county. The Commission hereby reaffirms its decision on said application No. 13 to the effect that if applicant shall at some subsequent time desire to distribute electrical energy in said towns and said county, this Commission will on proper application therefor and after public hearing render its decision on such application.

Dated at San Francisco, California, this 8th day of August, 1912.

DECISION No. 172.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA TRACTION COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ON PARK STREET AND ACROSS UNION STREET IN THE CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 177.

Decided August 12, 1912.

REPORT OF THE COMMISSION.

Central California Traction Company having heretofore on August 2, 1912, filed with the Commission its application for permission to construct a spur track at grade on Park street and across Union street, in the city of Stockton, San Joaquin County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and it further appearing that the company has secured the necessary permit or franchise from the city of Stockton to construct said spur track; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Central California Traction Company to construct a spur track at grade on Park street and across Union street in the city of Stockton, San Joaquin County, California, beginning at a point about fifty (50) feet east of the east line of Union street and in the center of the main line of said company on Park street; thence extending in a southwesterly direction on a twenty-four (24) degree curve to the left crossing Park street and Union street; thence on to private property in block No. 200 of city of Stockton; said spur track to form a connection with the tracks of

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Western Pacific Railway Company as shown by the map attached to the application; said track to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with the expense of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by the Central California Traction Company.

(2) The crossing shall be ballasted with first-class broken stone or gravel ballast and provided with the necessary crossing plank or guardrails, and otherwise constructed for the safe and easy passage of vehicles over same.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 12th day of August, 1912.

DECISION NO. 173.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT CERTAIN TRACKS AT GRADE ACROSS A PUBLIC HIGHWAY IN THE TOWN OF TRACY, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 179.

Decided August 12, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on August 8, 1912, filed with the Commission its application for permission to construct at grade certain tracks across a public highway—the county road, in the town of Tracy, San Joaquin County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern

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Pacific Company to construct three (3) tracks at grade across the county road in the town of Tracy, San Joaquin County, California, two (2) of said tracks being parallel with and on the south side of two (2) tracks which now exist connecting the main line of said company between Tracy and Stockton with the branch line between Tracy and Kerman; the third (3d) track to be constructed across the county road about one hundred eighty (180) feet south of the two crossings first mentioned and about fifty (50) feet south of the sidetrack now existing connecting Kerman Branch with the south side of the yards of the said company at Tracy; all of said three (3) crossings above to be constructed in accordance with map filed with the application and subject to the following conditions, viz:

(1) The entire expense of constructing said crossings and the expense of their maintenance hereafter in good and first-class condition shall be borne by Southern Pacific Company.

(2) The crossing shall be ballasted with first-class broken stone or gravel ballast and provided with the necessary crossing plank or guard-rails, and otherwise constructed for the safe and easy passage of vehicles.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 12th day of August, 1912.

DECISION No. 174.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO VALLEY ELECTRIC RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF THIRTY THOUSAND SHARES PREFERRED STOCK, PAR VALUE THREE MILLION DOLLARS, AND SEVEN THOUSAND FIVE HUNDRED SHARES COMMON STOCK, PAR VALUE SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS.

Application No. 75.

Decided August 13, 1912.

Held, **That the plan of applicant to raise a substantial part of the money necessary for the construction of a new electric road through the sale of stock is commendable, as the stock does not fasten upon the corporation fixed charges, a failure to meet which inevitably places the corporation in dire straits.**

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Held, That the proposal to pay 20 per cent commissions on the sale of stock is not unwarranted, particularly in view of the fact that bonds of established utility corporations are being sold at this amount of discount, but that the entire commission should not be taken from the first cash payment.

In order that reasonable assurance be had that the actual construction of this road will not be entered upon before there is sufficient money at hand to warrant proceeding with the scheme, there should be $750,000 paid in on stock before any construction begins or any expense other than that incident to the sale of stock is incurred by the company, and title to rights of way should be taken conditioned on the receipt by the company of the above amount of money.

A. C. Huston, for applicant.

REPORT OF THE COMMISSION.

GORDON and EDGERTON, *Commissioners*.

This is an application by the Sacramento Valley Electric Railroad Company for an order authorizing the issuance by applicant of 30,000 shares, par value of $3,000,000, preferred stock, and 7,500 shares, par value $750,000, common stock, and authorizing the applicant to sell said preferred stock at par and to pay commissions on the sale thereof of 20 per cent and authorizing the sale or exchange of said common stock for rights of way.

The articles of incorporation of applicant were filed on the fourth day of May, 1912, and thereunder applicant is empowered to build and operate a standard gauge electric, steam or other motive power passenger and freight railroad through the following territory.

Commencing in the town of Red Bluff, State of California, and running thence in a general southerly direction through the counties of Tehama, Glenn, Colusa, and Yolo to the city of Woodland, county of Yolo, State of California, a distance of 113 miles; thence in a general southeasterly direction through or near the town of Davisville, in Yolo County, State of California, and the town of Dixon, county of Solano, State of California, to the most convenient and practicable point of connection with Oakland, Antioch and Eastern Railway in the county of Solano, State of California, a distance of 36 miles, an intermediate branch beginning in the town of Colusa, State of California, and running thence in a general westerly direction through or near the town of Williams in the said county of Colusa, connecting with the main line from the town of Red Bluff to the city of Woodland, a distance of 11 miles. The estimated length of said railroad, including all of its intermediate branches is 160 miles. The authorized capital stock of applicant is $5,000,000, divided into 30,000 shares of preferred stock of the par value of $100 per share, and 20,000 shares of common stock of the par value of $100 per share. The holders of the preferred stock are entitled to receive when, and as declared from the surplus profits arising from the business of the corporation, yearly dividends at the

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rate of 6 per cent per annum, payable in monthly, quarterly or semi-annual installments, as the by-laws shall from time to time provide. Prior to July 1, 1915, the dividends on the preferred stock shall not be cumulative but until that date no dividends shall be paid or set apart upon the common stock in any year until a dividend at the rate of 6 per cent per annum in each year shall have been set apart upon the preferred stock. Commencing with the first day of July, 1915, the dividends on the preferred stock shall be cumulative and shall be declared and paid or set apart before any dividends on the common stock shall be paid or set apart so that if at any time dividends amounting to 6 per cent per annum shall not have been paid thereon or declared and set apart for all preceding dividend periods, the deficiency shall be declared and paid or set apart before any dividends shall be paid or set apart for the common stock. Whenever the cumulative dividends on the preferred stock for all previous years shall have been declared and the accrued installments for the current year shall have been declared and shall have been paid or set apart and the corporation shall have paid such cumulative dividends for the previous years and such accrued installments, or shall have set aside from the surplus profits arising from its business a sufficient sum for the payment thereon, the board of directors may declare dividends on the common stock payable then or thereafter out of any remaining surplus profits to the amount of 4 per cent per annum. If after the declaration of 6 per cent dividends on the preferred stock and 4 per cent dividends on the common stock there remains any surplus funds available for dividends, said surplus shall be equally divided between the holders of the preferred and common stock. In the event of any liquidation or dissolution or winding up of the corporation, whether voluntary or involuntary, the holders of the preferred stock shall be entitled to be paid in full both par value of their issues and the unpaid cumulative dividends thereon, before any amount shall be paid to the holders of the common stock and after payments to the holders of the preferred stock of its par value and on unpaid accruing cumulative dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

The board of directors have authority from time to time to set aside from the surplus profits arising from the business of said corporation such a sum as the board of directors may determine for working capital to be employed in the business of said corporation.

Sixteen hundred shares of the common stock, par value $160,000, have been subscribed for, and $16,000 thereof has been paid in cash in the corporation.

It is proposed by the incorporators of this company to build and operate an electric railroad through the territory named above. Three

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distinct routes have been surveyed as shown by the maps on file herein and applicant has not yet determined which of these three routes will be finally selected.

Applicant has had prepared and filed with the Commission estimates, by engineers, of the cost of building this railroad with its branches along the three routes surveyed as aforesaid. These estimates show a cost, exclusive of rights of way, of $4,708,200 for the so-called West line; $4,826,400 for the Middle line; and $5,106,200 for the East line.

According to the testimony of Mr. Donohoe, president of the corporation, it is expected to realize approximately $1,500,000 on the sale of preferred stock and later float a bond issue for $3,500,000 additional to complete the building of the road.

Applicant requests that it be allowed to sell the preferred stock on installments of $25 cash and balance in equal installments in three, six and nine months, promissory notes to be given for the deferred payments. It is also requested that the entire 20 per cent, or $20 on each share, be paid the salesman on receipt of the first cash payment of $25.

The plan to raise a substantial part of the money necessary for the construction of this road through the sale of stock is commendable as the stock does not fasten upon the corporation fixed charges, a failure to meet which inevitably places the corporation in dire straits. It is to be regretted that many utility corporations in this State have seen fit to raise the entire amount of money invested in their enterprises through the sale of bonds, thus burdening the entire physical value of their properties with fixed charges and compelling those in control of the utility to produce enough money regularly to meet these charges. This often results in the failure to properly take care of depreciation and to keep the plant in first class efficient condition, because of the necessity of squeezing the business to produce these inexorable fixed charges.

The proposal to pay 20 per cent commissions on the sale of stock, in our opinion, is not unwarranted, particularly in view of the fact that bonds are being sold on established utility corporations at this amount of discount. Of course, no commission should be paid on stock already subscribed for or sold without the services of a salesman. As to the time of his payment, however, we disagree with applicant in that we feel that his entire commission should not be taken from the first cash payment. First, because this only leaves $5.00 out of this payment in the hands of the company, and second, we feel that the salesman should share with the company the risk of a failure by the purchaser to make any more payments. Hence, we conclude that the commissions shall be paid in proportion as the purchase price is paid in, that is to say, the salesman shall receive 20 per cent of each cash

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payment. The form of contract for the sale of stock should be submitted for the approval of the Commission.

In order that reasonable assurance be had that the actual construction of this road will not be entered upon before there is sufficient money in hand to warrant proceeding with the scheme, there should be $750,000 paid in on stock before any construction work begins or any expense other than that incident to the sale of stock is incurred by the company, and title to rights of way should be taken conditioned on the receipt by the company of the above amount of money.

In order that the Commission may assure itself at all times that the money received from the sale of this stock is being properly and judiciously expended for the purposes named, we recommend that in addition to a compliance with Order No. 24, applicant be ordered to submit to the Commission for its approval before the execution thereof, all general contracts exceeding the amount $1,000.

Subject to the foregoing conditions, we recommend that the application be granted.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Sacramento Valley Electric Railroad Company for an order authorizing the issue by said company of 30,000 shares, par value, $3,000,000 preferred stock, and 7,500 shares, par value, $750,000 common stock, and authorizing applicant to sell said preferred stock at par and to pay commissions on the sale thereof of 20 per cent and authorizing the sale or exchange of said common stock for rights of way, and a hearing having been duly held and it appearing to the Commission that the money and property to be secured by the issue of said stock are necessary and reasonably required by said company for the purpose of procuring rights of way and constructing thereon the railroad as specified in said application and exhibits attached thereto, and the purposes for which the proceeds of the issue of said stock are to be used are not in whole or in part reasonably chargeable to operating expenses or income.

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by Sacramento Valley Electric Railroad Company of $3,000,000 par value preferred stock and $750,000 par value common stock.

Said preferred stock to be sold to net not less than 80 per cent of its par value to the company, provided that said stock may be sold to be paid for in installments, said installments to be not less than $25 cash at the time of sale and the balance in equal installments in not more than three, six and nine months thereafter. Promissory notes

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bearing interest at 6 per cent per annum may be taken for the deferred payments, the stock not to be delivered until fully paid for. Provided further, that if commissions be paid on the sale of said stock they shall not exceed an amount which will yield the aforesaid 80 per cent par value of said stock net to the company and said commissions shall be paid in proportion as the cash for said stock is received by the company. No commission shall be allowed or paid on the stock already subscribed for, nor shall any commission be allowed or paid except for services actually rendered in the sale of stock.

Said common stock may be sold by the company under the conditions above set out for the sale of preferred stock, or said common stock may be exchanged for rights of way over which said railroad is to be constructed and operated, such exchange to be made upon the basis of the fair market value of such rights of way and the par value of the common stock, provided that the exchange of common stock for rights of way shall not be finally consummated until $750,000 on the sale of preferred stock shall have been paid in to the treasury of the company. Proper provision, however, may be made for the conditional acquiring of said rights of way in exchange for said common stock pending final consummation of such exchange. Construction of the road shall not be entered upon nor liability created, nor money paid out except for commissions as aforesaid until there shall be in the hands of the company from the sale of stock $750,000.

The proceeds from the sale of said preferred stock shall be used for the following purposes: For the purchase of materials and rolling stock and the construction of an electric railroad in certain territory, all as set out in detail in the application and exhibits attached thereto and filed therewith.

Said company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or exchange of said stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission in accordance with the Commission's general order No. 24, stating the sale or disposal of such stocks during preceding month, the terms and conditions of such sale or other disposition, the moneys or property realized therefrom and the use and application of such money or property. And, in addition thereto, said company shall submit to this Commission for its approval the form of all contracts for the sale or exchange of stock, and before the execution thereof all contracts for grading, bridging, track, including materials and labor, equipments of all kinds and all materials, labor and property involving costs in excess of $1,000.

The authority hereby given to issue such stock shall apply only to stock issued by said company on or before the first day of August, 1913.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of August, 1912.

DECISION NO. 175.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZATIONS TO EXERCISE RIGHTS AND PRIVILEGES UNDER FRANCHISES HEREAFTER TO BE ACQUIRED IN THE COUNTY OF LOS ANGELES, AND IN THE CITIES OF VERNON, HUNTINGTON PARK, AND COMPTON, IN SAID COUNTY.

Application No. 165.

Decided August 13, 1912.

Order entered that the Commission will hereafter, upon application, issue a certificate that public convenience and necessity require or will require the exercise of rights or privileges under franchises not now but hereafter to be secured from the county and cities mentioned in the application.

Albert Crutcher, for applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application of Southern California Gas Company for a certificate of public convenience and necessity, and for an order that this Commission will hereafter issue its certificate permitting the exercise of rights or privileges under franchises which applicant has applied for but which have not yet been finally granted.

The financial condition of applicant is as follows:

Capital stock authorized—	
Preferred	$4,000,000
Common	6,000,000
Stock outstanding—	
Preferred	125,000
Common	6,000,000
Bonds authorized	10,000,000
Bonds outstanding	4,000,000
Additional indebtedness	200,000

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The $4,000,000 face value of bonds mentioned as outstanding were sold to the Pacific Light and Power Corporation under a contract by which said corporation agrees to pay over all cash received on the sale of said bonds to applicant. As a result of this contract approximately $2,388,000 face value of bonds have been sold, and the remainder are now in the hands of the Pacific Light and Power Company under the contract aforesaid and are about to be sold, when the money will be turned over to applicant. The Commission has decided heretofore that it has no jurisdiction over the sale of these bonds.

Approximately $2,328,000 has been realized from the sales of bonds above mentioned, and this money, it is alleged, has gone into the plant belonging to applicant.

The territory through which applicant proposes to run its pipe line, and to the inhabitants of which it proposes to furnish gas, is now unsupplied with gas, except for the portion of Vernon which is supplied with gas by the Los Angeles Gas Company, and as to this portion of Vernon applicant does not intend to install its service.

The Los Angeles Gas Company appeared at the hearing in this matter, and through a representative stated that they had no protest to enter against the granting of the certificate as applied for.

Applicant will supply its mains for a time with artificial gas manufactured in its plant in Los Angeles, but later proposes to furnish natural gas through this territory, as it will be the operating company for the pipe line through which natural gas is to be piped from the Midway field to Los Angeles and vicinity.

No schedule of rates for this gas has been prepared by applicant, but it is stated on its behalf that it will sell gas in the aforesaid communities at no greater prices than are now charged by the Los Angeles Gas Company.

Ordinances granting franchises along the route set out in the application and on the map filed therewith have been adopted by the supervisors of Los Angeles County and authorities of the cities of Vernon and Compton, and application for a franchise is now pending before the authorities of Huntington Park. The ordinances of said county and said cities are not yet in effect.

It is apparent that applicant proposes to furnish with gas a territory heretofore unsupplied and at prices no greater than are now charged by the Los Angeles Gas Company, which supplies a large portion of the city of Los Angeles with gas.

Therefore, I find as a fact that public convenience and necessity require the granting of the application, that the present or future public convenience and necessity require or will require the construction specified therein. I recommend that an order be entered that this Commission will hereafter upon application issue a certificate that

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public convenience and necessity require or will require the exercise of rights or privileges under franchises or permits not now, but hereafter to be secured from the county and cities mentioned in the application.

ORDER.

Southern California Gas Company having heretofore filed with this Commission its application for a certificate that the present and future public convenience and necessity require and will require the construction of a gas pipe line and distributing system in the county of Los Angeles and in the cities of Vernon, Huntington Park, and Compton, in said county, all as set out in the application and the map attached thereto, and for a preliminary order declaring that this Commission will hereafter upon application therefor, after said corporation has obtained franchises or permits it contemplates securing but which have not as yet been granted to it, issue a certificate or certificates that the present or future public convenience and necessity require or will require the exercise of the rights and privileges granted by said contemplated franchises and permits to construct, maintain, and operate a pipe line and distributing systems in said county and cities; and a public hearing having been had on said application, the Commission hereby finds as a fact that the present and future public convenience and necessity require and will require—

(*a*) The granting of the application of Southern California Gas Company for the construction of a gas pipe line and distributing systems in the county of Los Angeles and the cities of Vernon, Huntington Park, and Compton, in said county, all as set out in the application herein and the map attached thereto, and basing its conclusions on said findings,

It is hereby ordered as follows: The application of Southern California Gas Company for a certificate that the present or future public convenience and necessity require or will require the construction of said gas pipe line and distributing systems in the county of Los Angeles and the cities of Vernon, Huntington Park, and Compton, in said county, and the application of said Southern California Gas Company for an order declaring that this Commission will hereafter upon application issue a certificate that public convenience and necessity require or will require the exercise of rights or privileges under franchises or permits not now but hereafter to be secured from the county of Los Angeles and the cities of Vernon, Huntington Park, and Compton, is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of August, 1912.

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DECISION No. 176.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES UNDER FRANCHISES HERETOFORE GRANTED BY THE CITY OF PETALUMA AND THE TOWN OF SEBASTOPOL.

Application No. 182.

Decided August 13, 1912.

REPORT OF THE COMMISSION.

Great Western Power Company having, on May 6, 1912, filed with this Commission its Application No. 35, being in part for a preliminary order under the provisions of section 50*c* of the Public Utilities Act declaring that this Commission will hereafter, upon application, issue certificate that public convenience and necessity require the exercise of rights or privileges under franchises not now but hereafter to be secured from the city of Petaluma and the town of Sebastopol, and this Commission having on June 18, 1912, rendered its decision in the above mentioned Application No. 35, in which decision this Commission rendered the order applied for, and the franchises therein mentioned now having been granted by the said city and town to the Great Western Power Company, to wit:

By Ordinance No. 73 of the city of Petaluma, approved by the electors of said city on the fifteenth day of July, 1912, and by Ordinance No. 169 of the town of Sebastopol, adopted on July 1, 1912, in both of which franchises applicant is granted the right to construct, maintain, and operate electrical transmission and distribution lines and equipment in said city and town, and the Great Western Power Company having now applied to this Commission for a certificate that the public convenience and necessity require the exercise of rights and privileges granted to it under the above mentioned franchises,

It is hereby declared that public convenience and necessity require the exercise of the rights and privileges granted to applicant, the Great Western Power Company, by the city of Petaluma, in its said Ordinance No. 73, and by the town of Sebastopol, in its said Ordinance No. 169.

Dated at San Francisco, California, this 13th day of August, 1912.

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DECISION NO. 177.

IN THE MATTER OF THE APPLICATION OF COAST COUNTIES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE PURCHASE BY SAID COAST COUNTIES GAS AND ELECTRIC COMPANY OF ALL OF THE CAPITAL STOCK OF GILROY GAS WORKS.

Application No. 142.

Decided August 14, 1912.

The purchase by applicant of all the capital stock of another public utility permitted with the understanding that the purchase price shall not be used before this Commission, or any other public authority, as representing for rate fixing or for any other purpose the present value of the property acquired, nor shall such sum be used against the municipality in any possible purchase by it of said property. Before the sale may be consummated the vendor company shall first file with the city authorities statements showing cost of betterments and improvements, and the dates when made.

S. W. Coleman, for Coast Counties Gas and Electric Company.
Walter G. Fitzgerald, city attorney, for City of Gilroy.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Coast Counties Gas and Electric Company, hereafter called the Coast Counties Company, applies to this Commission for permission to purchase for $25,000 cash the entire authorized and issued capital stock of Gilroy Gas Works, a corporation, having a par value of $50,000.

The Coast Counties Company was incorporated on March 21, 1912. It is not necessary in this application to investigate the consideration paid or received for the $2,000,000 of capital stock which was issued by said company between said date and March 23, 1912, the effective date of the Public Utilities Act. The company is engaged in the business of supplying gas and electrical energy for light, heat and power in portions of the counties of Santa Cruz, Monterey, San Benito, and Santa Clara. It is at present operating the municipal electric plant of the city of Gilroy, under a lease from the city, and desires to operate also the municipal gas plant for the purpose of economy of operation and profit.

The gas plant in the city of Gilroy is owned by the municipality. On April 17, 1909, the city entered into a contract with L. P. Lowe, by which the city leased its gas plant to Lowe for ten years. Lowe agreed, among other things, to install a complete plant for the manufacture of

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gas, to have a capacity of at least six thousand cubic feet per hour, at a cost of not to exceed $12,500; also to install steel compression tanks of a capacity sufficient to hold twenty thousand cubic feet of free gas when suitably compressed, and a gas compressor; also to install street mains of designated lengths on specified streets from time to time as needed; and to install additional street mains as needed. Lowe was to report to the city "detailed descriptions and specifications of machinery and materials used in equipping the gas-making plant, the extension of street mains, service connections, meters and all other appurtenances applying to the manufacture and distribution of gas, together with the cost thereof." Lowe agreed to pay to the city of Gilroy annually 5 per cent of the gross receipts from all gas sales, with a maximum of $500 each year, and the city is given the option, at the expiration of the lease, of buying all the additions, extensions and improvements at a price to be agreed upon or settled by arbitration, with the proviso that the parties or arbitrators are not to consider the amount of business done by the lessee in fixing the valuation.

Mr. Lowe assigned this lease to Gilroy Gas Works, a California corporation, which was created on April 28, 1909, and which has continuously operated the plant. The city understood at the time the lease was made that Mr. Lowe would form a corporation for this purpose. This corporation's authorized capital stock is 500 shares of the par value of $100 each, making a total par value of $50,000. This stock is now owned by L. P. Lowe and D. O. Druffel, who have agreed to sell it to the Coast Counties Company for $25,000 cash. The amount of $25,000 represents the sum of $22,119.94, which the Gilroy Gas Works claims to have spent for additions, improvements and extensions to the property under the agreement with the city, plus material on hand, furniture, tools and other personal property.

The city of Gilroy was represented at the hearing by Mr. Walter G. Fitzgerald, the city attorney, who was its mayor when the lease of the gas works was made. Mr. Fitzgerald stated that the city was willing that the Commission's consent to the proposed sale be given, provided that the sum of $25,000, to be paid for the stock in the Gilroy Gas Works, be not deemed to represent the present value of the additions, improvements and extensions which have been made or be used against the city in any way in case the city should desire to take over such additions, extensions, and improvements at the termination of the lease; and provided, further, that the Gilroy Gas Works furnish the city an itemized statement showing in detail satisfactory to the Commission the exact amount of money expended for plant and extensions of pipe lines or mains and other property, if any, separately, with the time of installation or construction, length and size of pipe lines and mains in

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each construction, and amounts chargeable to each item. The city claims that the reports furnished prior to January 1, 1912, are defective in that they do not state in sufficient detail the items which the city claims should be specified in accordance with the provisions of the lease. In rendering its opinion in this case, the Commission does not undertake to express any opinion as to the value of the property of the Gilroy Gas Works, either in its original or in its present condition. The sum of $25,000 does not necessarily bear any fixed relation to that value. I regard the city's request with reference to more detailed reports from the Gilroy Gas Works as a reasonable request. The Coast Counties Company, by its general manager, agreed at the hearing to both of the conditions suggested by the city.

The consolidation of management of both the electric lighting plant and the gas plant should result in more economical management. By reason of this fact and of the further facts that the interests of the city of Gilroy will be fully protected and that the city consents to the transaction under the conditions hereinbefore specified, I see no objection to the application and recommend that it be granted subject to the conditions in the order specified.

I submit herewith the following form of order:

ORDER.

Coast Counties Gas and Electric Company having filed its application to purchase for $25,000 in cash the total authorized and issued capital stock of Gilroy Gas Works, consisting of 50,000 shares, now owned by L. P. Lowe and D. O. Druffel, and a public hearing having been held on said application, and the city of Gilroy appearing and consenting that said application be granted, subject to the conditions hereinafter specified, and it appearing that public convenience and necessity will be subserved by the grant of the application,

It is hereby ordered that said application be and the same is hereby granted, subject to the following express conditions:

1. The price for which said stock is to be purchased, namely, $25,000, in cash, shall not be used before this Commission or any other public authority as representing, for rate fixing or for any other purpose, the present value of the property of Gilroy Gas Works, or as bearing any necessary relation thereto, and particularly this amount shall not be used against the city of Gilroy in any possible purchase of said property by the city. The purchase of said stock by the Coast Counties Gas and Electric Company will be taken as a consent by that company to this condition.

2. Before said sale may be consummated, Gilroy Gas Works shall first have filed with the city of Gilroy a statement or statements, satisfactory to this Commission, showing as far as possible the exact amount

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of money expended for plant and extensions of pipe lines or mains and other property, if any, separately, with the time of installation or construction, length and size of pipe lines and mains in each construction, and amount chargeable to each item. When such statement or statements have been filed, the Commission will advise applicant by letter, whereupon, but not before, the sale may be consummated.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1912.

DECISION No. 178.

IN THE MATTER OF THE APPLICATION OF COALINGA CONSOLIDATED WATER COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF ONE HUNDRED THOUSAND DOLLARS AND THE EXECUTION OF TRUST DEED TO SECURE THE SAME.

Application No. 151.

Decided August 14, 1912.

Applicant asks for authority to issue bonds for the purpose of refunding outstanding bonds. *Held*, that the rate-paying public will assume no additional burden by reason of the refunding, and that the application should be granted.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application of Coalinga Consolidated Water Company for an order of this Commission authorizing an issue of bonds of the face value of $100,000, which bonds are to be exchanged for an issue of $100,000, face value, now outstanding.

The applicant was incorporated in 1903 and at that time consolidated the Coalinga Water Company and The Coast Range Water Comapny, its only rival. It pumps water from seven wells located upon the northwest quarter of the northeast quarter of the southwest quarter of section 16, township 20 south, range 15 east, M. D. B. and M., about three and one half miles north of the city of Coalinga, and supplies water to some thirty consumers, mostly oil companies, in the eastern portion of the Coalinga oil fields. It also supplies water to the Pleasant Valley Water

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Company, which company supplies the city of Coalinga. Applicant receives from the Pleasant Valley Water Company as payment for this water one half of the latter company's gross receipts. Applicant's property consists of nearly thirty miles of water pipe lines in the oil fields, ranging from two to six inches in diameter, ten acres of land on which its steam plant, water wells, and pumping machinery are located, boilers, pumps and machinery, certain water rights and 20,411 shares out of a total of 33,394½ shares of the issued capital stock of the Pleasant Valley Water Company. The latter company owns a distributing system for water in the city of Coalinga, a water main to connect with applicant's plant in the oil fields and also a distilling plant and a pipe line connected therewith. A verified report filed with this Commission by the Pleasant Valley Water Company as of December 31, 1911, states that the value of the distribution tanks, mains, valves, meters, boxes, real estate and improvements amount to $70,076.76, with liabilities outstanding amounting to $12,652.30. The same report shows a gross operating revenue for thirty months of $70,986.79, with operating expense for the same period of $52,640.44, leaving a total operating income for the thirty months of $18,346.35. Adding to this amount the sum of $270 from stock dividends in other companies and substracting interest paid during the same period amounting to $1,901.64, and a miscellaneous expense of $1,729.17, the net income for the thirty months is reported as $14,985.54, all of which was spent for betterments and improvements.

Coalinga Consolidated Water Company also made a report, not verified, showing its condition as of December 31, 1911, but it is impossible to secure from this report an accurate idea of applicant's financial condition. The report shows an item of "plant, $250,000," but this item is obviously inserted to balance a corresponding item of "Capital stock, $250,000." Mr. J. L. Chaddock, the president of applicant, testified to a value of $95,000 for the physical plant, exclusive of the Pleasant Valley Water Company's stock and not assigning any value to applicant's water rights. Of this amount $10,000 is for applicant's real estate and the remaining amount represents an appraised value of the plants of the consolidated companies of $30,000 on March 5, 1903, then adding the amounts spent for betterments and substracting an estimated depreciation. Most of the money spent for betterments has come from earnings. The report gives the Pleasant Valley Water Company's stock as having a value of $23,843.50, this being the actual cost to applicant. It is obvious, however, that if the Pleasant Valley Water Company's report to this Commission represents accurately its condition, the real value of applicant's interest in that company is larger than the amount stated. Basing my opinion

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solely on the evidence submitted on this application, I am of the opinion that the value of applicant's physical property plus its interest in the Pleasant Valley Water Company was on December 31, 1911, somewhere in the neighborhood of $130,000.

Applicant's total authorized capital stock is $250,000, consisting of 250,000 shares of the par value of $1.00 each, all of which shares have been issued. No relation exists between the capital stock and the real value of the property, which is considerably less. Applicant has outstanding 200 bonds of the total face value of $100,000, issued January 1, 1911, bearing interest at the rate of six (6) per cent per annum and maturing on January 1, 1921. By the terms of the trust deed, bonds of the face value of $12,500 are to be retired on or before January 1, 1914, and on or before the first day of January of each year thereafter up to and including January 1, 1921, the bonds to be retired to be determined by lot. These bonds were delivered to J. L. Chaddock and W. H. Stenger in return for moneys advanced and services rendered and also as representing accrued income for five years, and the testimony shows that they are supposed to represent the value of the plant and the holdings in the Pleasant Valley Water Company in excess of the sum of $30,000, which was the appraised value of the property of the Coalinga Water Company and The Coast Range Water Company at the time of their consolidation into the Coalinga Consolidated Water Company. It is now proposed to refund these bonds by a new issue of $100,000, also bearing interest at six (6) per cent per annum, but becoming due serially in amounts of $10,000 on July 1, 1915, and on July 1 of each succeeding year until the final payment shall have been made on July 1, 1924. These bonds are to be secured by trust deed to the Title Insurance and Trust Company of Los Angeles, a copy of which proposed trust deed is attached to the application. The reason for the proposed refunding is stated to be that it is difficult to dispose of bonds which are to be redeemed by lot and that the new issue will be more favorable to the applicant in that the first retirement is to be on July 1, 1915, instead of January 1, 1914, and that the annual amount to be paid on principal is to be $10,000 instead of $12,500. The bonds now outstanding are held by E. A. Nickerson and the Superior Beet Sugar Corporation, who own over half the capital stock and each of whom holds one half of the bonds. The bondholders are willing to make the exchange.

Applicant intends to pay the principal and interest of these new bonds, amounting first to $16,000 per year, out of earnings. As bearing on the question whether the earnings will be sufficient for that purpose, I wish to refer to the applicant's report to this Commission of its profit and loss account as of December 31, 1911. This report shows that the

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total income for the year was $57,476.60, and that the total expenditure was $42,496.17, leaving a net profit of $14,980.43. Mr. Chaddock, however, testified that the income as stated did not take account of the earnings of the Pleasant Valley Water Company, which were put back into the property in the form of betterments and additions. The expenditure includes an item of $13,714.48 for salary, the larger portion of which consists of salaries of $500 per month paid to the president and vice-president, beginning June 1, 1911. It follows that if the income for the succeeding years is to be the same as that for the year ending December 31, 1911, and if no dividend is declared by the Pleasant Valley Water Company, it will be necessary for applicant to make a saving somewhere in order to meet the payment of principal and interest on the bonds, and this saving would probably have to be made on the salary account. The testimony is, that no salary was paid to the president and vice-president prior to 1911, but that since June 1, 1911, a salary of $500 per month has been paid to the president and to the vice-president of the company, who are among its principal stockholders, instead of declaring a dividend. The president of the company testified that in case there were any difficulty as to the payment of the prinicpal and interest of the bonds from the annual earnings, the salaries of the president and vice-president would be reduced in so far as necessary.

I find that it will be of advantage to applicant to substitute the proposed new bond issue for the one outstanding and that the rate paying public will assume no additional burden therefrom, and recommend that the application be granted, both as to the issue of the bonds and the execution of the trust agreement.

I submit herewith the following form of order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Coalinga Consolidated Water Company for an order authorizing the issue by said company of bonds in the amount of $100,000, face value, said bonds to become due serially in the amount of $10,000 each year, the first redemption to be made on July 1, 1915, and subsequent redemptions in the amount of $10,000 each to be made on July 1st of each succeeding year, up to and including the first day of July, 1924, and to bear interest at the rate of six (6) per cent per annum, payable semiannually, and to be secured by a trust deed or mortgage upon all the property of the company, and a hearing having having been duly held upon said application, and it appearing to the Commission that the issue of said bonds and the execution of a trust deed to secure the same is reasonably required by said company for the discharge and lawful refunding of its obligations, as hereinafter in

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greater detail specified, and that the purposes for which said bonds are to be issued are not in whole or in part reasonably chargeable to operating expenses or to income.

It is hereby ordered as follows:

1. Coalinga Consolidated Water Company is hereby authorized to issue two hundred (200) bonds of the face value of five hundred ($500) dollars each, bearing the numbers 1 to 200 inclusive, twenty (20) of which said bonds shall be due and payable on the first day of July, 1915, and further successive amounts of twenty (20) bonds on the first day of July of each year thereafter up to and including the first day of July, 1924, to bear interest at six (6) per cent per annum, payable semiannually, under and in pursuance of the terms of trust deed of which a draft is attached to application in this proceeding, and which said Coalinga Consolidated Water Company is hereby authorized to make and execute to Title Insurance and Trust Company, as trustee, subject to the conditions following, and not otherwise, to wit:

(*a*) Said bonds shall be issued only in exchange for bonds of applicant's outstanding issue of $100,000, the exchange to be made bond for bond, and none of the bonds hereby authorized nor said trust deed shall have any validity until all the present outstanding bonds have been exchanged for bonds of the issue hereby authorized and the present trust deed shall have been cancelled of record.

(*b*) Said bonds hereby authorized shall be applied only for the discharge or lawful refunding of the obligations of the applicant, evidenced by its said present outstanding bond issue in the amount of $100,000, as hereinbefore specified.

2. Applicant shall keep a true record showing the disposition made of every bond hereby authorized to be issued and showing the receipt of the bonds for which said bonds hereby authorized are to be exchanged, and on or before the twenty-fifth day of each month until said exchange shall have been completed applicant shall make a verified report to this Commission, stating the disposition of such bonds during the preceding month and the receipt of bonds of the present outstanding issue in exchange therefor, and in this and all other respects applicant shall comply fully with the Commission's order General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority hereby given to issue bonds shall apply only to bonds issued by applicant prior to the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1912.

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DECISION No. 179.

IN THE MATTER OF THE APPLICATION OF NORTHERN CALIFORNIA POWER COMPANY, CONSOLIDATED, FOR AN ORDER AUTHORIZING IT TO ISSUE FIVE HUNDRED THOUSAND DOLLARS FACE VALUE OF FIVE YEAR SIX PER CENT DEBENTURE NOTES.

Application No. 156.

Decided August 14, 1912.

Applicant asks for permission to issue $500,000 six per cent debenture notes, and to use the proceeds for discharging obligations and for the reimbursement of moneys expended from income for improvements and betterments. Where the officials of a corporation are wholly unable to produce, either from their books or from their knowledge of the business, any reliable information as a basis for the Commission's determination, it becomes extremely difficult, if not impossible, for the Commission to arrive at any definite conclusion short of having a complete physical valuation of the plant made, which would consume months. Applicant urged an early decision, and claimed that the transaction proposed amounts in essence to a refunding of existing obligations, as a result of which the company would gain five years' time in which to pay its debts.

Held, That the issue of said notes is reasonably required by applicant for the discharge and lawful refunding of its obligations, to the extent that such obligations are not in whole or in part reasonably chargeable to operating expenses or to income, and that while said outstanding obligations are not specifically set out in the application and do not specifically appear from the evidence, yet, under the restrictions imposed in the order, the result will be that the purposes for which said debenture notes are issued herein are not in whole or in part reasonably chargeable to operating expenses or to income.

Held, That the permission granted should be contingent upon a stipulation by the company that at any time within eighteen months from date an assessment will be levied upon the stockholders of the company in an amount designated by the Commission, which shall be the amount necessary to pay outstanding obligations that are properly chargeable to income or operating expenses.

Held, It will be necessary that each claim, before its payment from the proceeds of the issue, shall be presented to the Commission, so that it may be determined whether or not such claim is one in the payment of which the proceeds of these debenture notes should be used.

Edward Whaley, for applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application for an order authorizing the issuance by Northern California Power Company, Consolidated, of its Series B, six per cent gold debenture notes of the face value of $1,000 each, to a total face value of $500,000, to be dated July 15, 1912, and to mature July 12, 1917, and to sell same at a price of not less than $960 for each debenture of $1,000 face value, or a total price of $480,000; and to

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apply the proceeds of such sale to the liquidation of its outstanding obligations.

The condition of the capitalization of applicant is as follows:

Capital stock, all common, authorized and outstanding	$10,000,000
Bonds authorized	10,000,000
Bonds outstanding	3,964,000
Bonds outstanding on companies consolidated into applicant	1,003,000
Bonds outstanding on Sacramento Valley Power Company, under contract to be purchased by applicant	900,000
Debenture bonds of applicant outstanding on above contract of purchaser	800,200

It should be said at the outset that it has been impossible to obtain adequate information concerning the value of the property owned by applicant, or its real net earnings as distinguished from a sum which is claimed to be net, but which may not be because of the failure to set aside proper amounts for depreciation. The officials of this corporation are wholly unable to produce, either from their books or from their knowledge of the business, any reliable information on the above subjects, and it must be apparent that where the managers of a utility business have no such information, it becomes extremely difficult, if not impossible, for the Commission to arrive at any definite conclusion short of having a complete physical valuation of the plant made, which would consume months. Applicant has urged speed on the part of the Commission in coming to a conclusion as to whether or not this request for a debenture note issue will be granted, and has earnestly urged that no harm could result in granting this application, notwithstanding the slight amount of information obtainable as to the real condition of this corporation, because the transaction proposed amounts in essence to a refunding of existing obligations, as a result of which the company would gain five years' time in which to pay its debts.

The fact that the granting of this application will in effect merely bring about the refunding of present outstanding indebtedness is urged by the managers of this corporation as sufficient reason for the granting of the application. This may or may not be true. The Commission has, in several instances in passing upon applications such as this, been confronted with a condition analogous to the one we find here to exist. The system of financing which has heretofore prevailed in the State placed many utilities in a financial condition which this Commission expects to prevent as to utilities hereafter organized, and hopes to correct, at least in part, as to utilities whose financial condition has been brought about by action in the past which this Commission will not tolerate in the future.

The question that is here presented is, shall the Commission allow the contracting of new indebtedness by a utility regardless of its present financial condition so long as the new indebtedness does not add to its

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already existing obligations, but merely substitutes a new obligation for one that now exists? Or, shall the Commission in every case take into consideration the present financial condition of the utility applying to issue stocks and bonds, and when the financial condition is shown to be unsound, shall the Commission require a correction of the bad financial condition as a prerequisite to the issuance of any stocks or bonds whether for refunding purposes or otherwise?

I believe that under ordinary circumstances the financial condition of a utility should always be considered in allowing the issuance of stocks and bonds, whether the same are for refunding purposes, or will result in additions to the already outstanding obligations.

There can be no doubt that the Commission's approval of the issuance of stocks and bonds will be used by utilities in the sale thereof. Speaking as an abstract proposition, if the Commission should authorize the issuance of stocks and bonds for refunding purposes of a concern which is plainly insolvent, such action on our part might be used to work fraud upon the purchasers of these new securities, and when the accounting comes, this Commission, of course, will be held accountable for having permitted new creditors to be substituted for other creditors. The original creditors of the concern, it is presumed, assumed their relationship with the utility at a time when its financial condition was good, while at times the new creditors will be led partly by the action of this Commission in approving the securities, to assume their relationship with the utility when the utility may be financially unable to redeem its obligations.

We recognize the fact that we owe a duty to the utility and its patrons, and to a certain extent to the investors as well. While, as we have stated in several instances, we do not guarantee the success of any undertaking of any utility, still we would be remiss in our duty if we failed to take into consideration the financial condition of the concern desiring to issue securities, knowing, as has already been said, that our approval will be used by the utility in the sale of such securities.

We have been dealing herein with those cases where the financial condition of the applicant is plainly insecure. There may be many instances where the financial condition will not be such as we believe it should be, and the utility still be in no danger of insolvency. In such cases the issuance of additional securities for the purpose of refunding already existing obligations to the extent permitted by law, is not subject to the same objection as exists with reference to an insolvent or tottering concern.

The proper parties to bear losses of utilities as well as of any other corporations, are the stockholders. To be sure, there is a stockholders' liability which legally holds the stockholders to account, but too often

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in the case of utilities at least, bad financial conditions brought about by high financing are cured by exploiting the public through high rates, or by more high financing, and through reorganizing and unloading upon new stockholders and new bondholders securities that have nothing behind them except water and the desire of the promoters to reap a profit.

Investigation into the affairs of this concern shows that most of its stock was issued without consideration to the corporation, but that it had thereafter been sold to the public and has reached the hands of present stockholders at prices reaching as high as sixty-five ($65) dollars per share of the par value of one hundred ($100) dollars. Likewise, it appears that many of the obligations which are sought to be liquidated by this issue of securities are obligations that are properly chargeable to operating expenses. The Public Utilities Act provides that stock and bonds shall not be issued for obligations "in whole or in part reasonably chargeable to operating expenses or to income." The operating expenses of a utility should be taken care of from the income derived annually from rates, or, where necessary, by assessment; and likewise depreciation should be provided for ahead of most expenditures other than operating expenses. Bond interest of course must be paid, but bond interest should come out of the profit which a reasonable rate gives to a concern over its operating expenses, depreciation and other charges which are directly connected with the furnishing of a utility.

It appears, as nearly as we can judge from the records, that this company owes in the neighborhood of $750,000 for which funds must be secured in the immediate future. We do not believe it is in danger of insolvency, and hence are not inclined to prevent it from securing a part of this money from the refunding issue such as is applied for in this application, but we do not propose to allow it to issue these debenture notes and use the proceeds thereof for the payment of obligations which are properly chargeable to operating expenses or depreciation.

It is urged that although the claims presented to the Commission to be liquidated by this issue of debenture notes show among them items properly chargeable to operating expenses, that this company has used the funds which properly should have paid such claims in extending its plant and constructions. The importance of this statement, while the actual condition does not appear clearly from the evidence, is that consideration should be given to such expenditure.

We are disposed under all the circumstances to allow the issuance of these debenture notes, but it will be necessary that each claim before its payment from the proceeds thereof, shall be presented to this Commission so that it may be determined whether or not such claim is one in the payment of which the proceeds of these debenture notes should be used.

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If the condition of this company is as urged by its officers, then no doubt the proceeds from the sale of these debenture notes will put it into such a condition as regards its creditors that in its regular course of business it may take care of its other obligations.

If, on the other hand, it shall develop that there have not been expenditures made upon the plant in which funds were used that might properly have been devoted to the payment of taxes and other operating expenses of the concern, we will have left obligations which can legally be paid from the proceeds of these debenture notes, and which should not in justice to the patrons of this utility be paid from future rates, and therefore an assessment of the stock will be necessary.

The permission to issue debenture notes as applied for should be contingent upon a stipulation signed by the officers of this company that at any time within eighteen months from date an assessment will be levied upon the stockholders of the company in an amount designated by the Commission, which shall be the amount necessary to pay outstanding obligations that are properly chargeable to income or operating expenses.

The following form of order is submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by the Northern California Power Company, Consolidated, for an order authorizing the issuance by it of its Series B, six per cent gold debenture notes of the face value of $1,000 each to a total face value of $500,000, to be dated July 15, 1912, and to mature July 15, 1917, and to sell the same at a price not less than $960 for each debenture note of $1,000 face value, or a total price of $480,000, and to apply the proceeds of such sale to the liquidation of its outstanding obligations, and hearing having been duly held upon said application; and it appearing to the Commission that the issue of said debenture notes is reasonably required by said company for the discharge and lawful refunding of its obligations, to the extent that such obligations are not in whole or in part reasonably chargeable to operating expenses or to income, and that while said outstanding obligations are not specifically set out in the application and do not specifically appear from the evidence, yet, under the restrictions hereinafter imposed, the result will be that the purposes for which said debenture notes are issued herein are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered as follows: Northern California Power Company, Consolidated, is hereby authorized to issue five hundred debenture notes, each of the face value of $1,000, bearing numbers 1 to 500 inclusive, said debenture notes to bear date July 15, 1912, and to mature

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July 15, 1917, and the same to bear interest at six per cent (6%) per annum, and the same to be sold at a price of not less than $960 for each debenture note of the face value of $1,000, subject to the conditions following and not otherwise, towit:

(*a*) All moneys received from the sale of said debenture notes shall be placed in the treasury of the said applicant, and no moneys paid out therefrom in the liquidation of outstanding indebtedness, or for any other purpose, until the claim which it is intended to pay shall be presented to the Railroad Commission so that it may be determined by said Commission that said claim is not in whole or in part reasonably chargeable to operating expenses or income.

(*b*) Applicant shall keep a true record showing the disposition made of all moneys received from such sale of debenture notes, and expended under the authority of the Commission, and shall indicate in said record the approval of the Railroad Commission to said expenditures, and the date thereof, and on or before the twenty-fifth of each month the applicant shall make a verified report to the Commission showing said disbursements, and in this and all other respects applicant shall comply fully with the Commission's order, and with General Order No. 24, which in so far as applicable is made a part of this order.

(*c*) As a condition precedent to the approval by this Commission of the issuance by the applicant of the debenture notes herein specified, said applicant shall file with this Commission a stipulation in form satisfactory to the Commission, agreeing that at any time within eighteen months from date hereof, it will when directed by this Commission, levy an assessment upon its stockholders in an amount to be determined by this Commission.

(*d*) The authority hereby granted to issue debenture notes shall apply only to notes issued by applicant prior to the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated San Francisco, California, this 14th day of August, 1912.

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DECISION No. 180.

THE MODESTO AND EMPIRE TRACTION COMPANY
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 235.

Decided August 11, 1912.

Complainant alleges that the city of Modesto is discriminated against by refusal of respondent to enter into joint rates with applicant.

Held, That public convenience and necessity demand the establishment of a through route and joint rates between said parties between the points specified, and establishing the maximum joint rates to be charged.

L. L. Dennett, for complainant.
E. W. Camp and *U. T. Clotfelter*, for defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This is an action brought by the Modesto and Empire Traction Company, a line of railway operating between the city of Modesto and the town of Empire, a distance of five miles, for the purpose of having this Commission establish through route and joint rates for the transportation of freight and passengers in connection with and from and to points served by the Atchison, Topeka and Santa Fe Railway.

The complainant alleges that by reason of the refusal of the Atchison, Topeka and Santa Fe Railway Company to enter into joint rates with the Modesto and Empire Traction Company and establish as such joint rates the rates of the Southern Pacific Company from San Francisco and Stockton to Modesto, that a discrimination is worked against the city of Modesto. It is pointed out that the mileage from San Francisco to Empire is 110 miles via the Atchison, Topeka and Santa Fe Railway and from Empire to Modesto 5 miles via the Modesto and Empire Traction Company, thus making a through route of 115 miles as against 114 miles from San Francisco to Modesto via the Southern Pacific, and that by reason of the distance being so nearly equal via both routes, the rates should correspondingly be equal. The complainant has evidently used the long line mileage of the Southern Pacific Company from San Francisco to Modesto, as we find the actual mileage via the short line route to be 101.7. The distance from Stockton to Modesto via the Southern Pacific Company is 29.6 miles. The distance from Stockton to Empire is 32 miles via the Atchison, Topeka and Santa Fe,

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to which must be added 5 miles from Empire to Modesto, making the distance 37 miles via the joint route of the Santa Fe and Modesto and Empire Traction Company, as against 29.6 miles via the Southern Pacific Company between Stockton and Modesto.

In dealing with this controversy, I will consider first the passenger rates. The present passenger fare from San Francisco to Modesto via the Southern Pacific Company is $2.95; from San Francisco to Empire via the Santa Fe $3.20, and between Empire and Modesto 15 cents, making a through rate via the Santa Fe and Modesto and Empire Traction Company of $3.35. Passenger rates are usually constructed on a uniform mileage basis and in the San Joaquin Valley the carriers have adhered to a rate of 3 cents per mile as a general rule for main line points. We know of no reason why this Commission should order a joint passenger rate from San Francisco to Modesto—115 miles via the Atchison, Topeka and Santa Fe and the Modesto and Empire Traction Company—of $2.95, simply because it is the fare of the Southern Pacific Company based on 101.7. It must be apparent that to establish such a joint rate would have the effect of cutting the local rates of the Santa Fe to a point where it amounted to $2.95. The fare from San Francisco to points in the San Joaquin Valley via the Santa Fe system which would be affected by a rate of $2.95 established to Modesto are Harrold, present rate of $3.00, Huntley $3.05, Gravel Pit $3.10, River Bank $3.10, Claus $3.10, Empire $3.20. In other words, should the Commission establish rate of $2.95 to Modesto, it would have the effect of cutting the rates of the Santa Fe to these points in these amounts.

The Southern Pacific fare from Stockton to Modesto is 90 cents for a mileage of 29.6 miles while the Santa Fe from Stockton to Empire—32 miles—is 95 cents, to which is added 15 cents to reach Modesto via the Modesto and Empire Traction Company. Here again, we have the same condition as obtains in the rates from San Francisco to Modesto. The local rates of the Atchison, Topeka and Santa Fe are not in controversary in this case and this Commission should not make an order which will have the effect of reducing those rates which have not been in question. If we establish a rate of $2.95 from San Francisco to Modesto via the Santa Fe and Modesto and Empire Traction Company, it would automatically reduce the rates of the Atchison, Topeka and Santa Fe. The feature of the complaint dealing with the passenger rates should be dismissed.

This situation with reference to freight traffic presents a different condition than that of the passenger traffic. I visited Modesto and listened to arguments of shippers and endeavored to ascertain whether public convenience and necessity demands the establishment of such

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through route and joint rates. The carriers in question were notified of the Modesto hearing and had representatives present at the meeting. I am convinced, after careful consideration, that public convenience and necessity demand the establishment of a through route and joint rates for the transportation of freight between Modesto on the Modesto and Empire Traction Company and points on the Atchison, Topeka and Santa Fe Railway between San Francisco on one hand and points north of Empire on the other. It remains to be determined whether or not the joint rate to be established shall be the sum of the locals involved.

It has not been customary for carriers in the voluntary establishment of joint rates to receive as their proportion of such joint rates their full local rates up to the junction point. I could refer to many joint tariffs on file with this Commission between two carriers where divisions of joint rates are much less than the full locals of participating lines. With the establishment of joint rates, the participating carriers usually save the expense of one terminal charge, which is an important element to be considered in the establishment of through rates over two or more lines. Therefore, it would appear that on freight which the Santa Fe might haul to Empire for delivery to the Modesto and Empire Traction Company, the Santa Fe performs a less expensive service in making delivery to the Modesto and Empire Traction Company than if the shipment had to be handled by their station forces and deliveries made direct at Empire. It is, therefore, apparent that the service performed by the Santa Fe to and from Empire is of less value to the public, and less expensive to the carrier when originating at or destined to Modesto than if destined to or originating at Empire proper, and there is no reason why the Atchison, Topeka and Santa Fe Railway Company under these circumstances should obtain as great revenue for the handling of freight to Empire destined Modesto via Empire as destined Empire direct.

I find as a fact that a through route and joint rates for the transportation of freight should be established between the Atchison, Topeka and Santa Fe Railway Company and the Modesto and Empire Traction Company between San Francisco and Modesto and points between, but said through route and joint rates not to include traffic originating out of or destined to Empire. And I further find that the joint rates to be established should not exceed on less than carload freight 65 per cent of the Atchison, Topeka and Santa Fe Railway Company's rate between the point on the line of said railway and Empire plus the local rate of the Modesto and Empire Traction Company; and that the rate on carload freight shall not exceed 75 per cent of the Atchison, Topeka and Santa Fe Railway Company rate between the point involved and Empire

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plus the local rate of the Empire Traction Company. The Empire Traction Company shall perform all terminal service at Empire except the actual setting out and placing of cars, which service shall be performed by the Atchison, Topeka and Santa Fe Railway Company.

I therefore submit the following order:

ORDER.

Application having been made to the Railroad Commission of the State of California by the Modesto and Empire Traction Company to have established a through route and joint rates over the line of the Atchison, Topeka and Santa Fe Railway Company between all points on said company's line between San Francisco and Empire, and all points on the line of the Empire Traction Company for the transportation of passengers and freight, and it appearing to the Commission that public convenience and necessity does not warrant the establishment of said through route and joint rates for transportation of passengers; said application with reference thereto is denied.

And it appearing to the Commission that the application to establish a through route and joint rates for the transportation of freight should be granted, and it having been found as a fact that public convenience and necessity require the granting of said application with reference thereto, a through route is hereby established from all points on the Atchison, Topeka and Santa Fe Railway Company including and between San Francisco and Empire, and all points on the Empire Traction Company's line, and joint rates for the transportation of freight over said through route for all commodities offered for transportation thereover.

It is further ordered that said joint rates shall not exceed for less than carload freight 65 per cent of the local rate of the Atchison, Topeka and Santa Fe Railway Company between the point involved and Empire, plus the local rate of the Empire Traction Company; and on carload freight said joint rate shall not exceed 75 per cent of the local rate of the Atchison, Topeka and Santa Fe between the point involved and Empire, plus the local rate of the Empire Traction Company.

And it is further ordered that the Empire Traction Company perform all terminal service at its own expense at Empire, except the setting out and placing of cars and the switching of cars into and out of the Atchison, Topeka and Santa Fe trains at said point.

And it is further ordered that the said companies involved agree upon the commodities which move between the points involved herein and publish, distribute and present to this Commission on or before the tenth day of September, 1912, a tariff setting out said joint rates between the points involved herein.

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And it is further ordered that the carriers involved inform this Commission on or before the first day of September, 1912, whether or not they have agreed upon a division of the joint rates established herein, and if said carriers have not at said time agreed upon said divisions this Commission will establish said divisions.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1912.

DECISION No. 181.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT CERTAIN TRACKS AT GRADE ACROSS NINTH STREET AND DAYTON AVENUE, CHICO, BUTTE COUNTY, CALIFORNIA.

Application No. 186.

Decided August 16, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on August 15, 1912, filed with the Commission its application for permission to construct at grade its sidetrack across Ninth street and Dayton avenue, city of Chico, Butte County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary and that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct its sidetrack at grade across Ninth street and Dayton avenue, city of Chico, Butte County, California, said track beginning on the east line of Ninth street about sixteen (16) feet south of the center of the main line of said company; thence extending easterly across Little Chico Creek and across Dayton avenue to a connection with the present sidetrack of said company, as shown by the map attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings and the expense

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of their maintenance hereafter in good and first-class condition shall be borne by Southern Pacific Company.

(2) The crossings shall be provided with the necessary plank or guardrails and constructed of sufficient width to properly care for the traffic and shall be ballasted with first-class broken stone or gravel ballast, and in every way made safe for the passage of vehicles and other road traffic.

The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 16th day of August, 1912.

DECISION No. 182.

PERCY G. BETTS
vs.
PEOPLES WATER COMPANY.

Case No. 284.

Decided August 16, 1912.

Complaint alleges that the water supply furnished by respondent is inadequate. Question of jurisdiction discussed.

Ordered, That respondent confine its distribution of water to the zones to which such water is delivered, except in cases of extreme emergency.

S. J. Hankins, for complainant.
McKee & Tasheira, for defendant.
R. C. Staats, city attorney, for city of Berkeley.

REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners.*

Percy G. Betts, a resident of what is known as the Claremont district in Berkeley, living at 182 Alvarado road, on July 2, 1912, filed his complaint against Peoples Water Company, alleging in brief that said company is engaged in furnishing water to the people of Berkeley and vicinity; that complainant is one of its patrons; that for more than three years last past defendant's supply of water to complainant for domestic use has been insufficient, particularly during warm weather;

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that on specified days, namely, May 29, 30 and 31, June 7 and June 27, 1912, there was no water supply; that by reason of inadequate service and lack of water, complainant and his family have been greatly inconvenienced, and the value of complainant's property reduced, and that the supply of water for fire protection is inadequate. Complainant asks that defendant be required to install forthwith such equipment as will provide an adequate supply of water. On July 22, 1912, defendant filed its answer denying most of the material allegations of the complaint, admitting the shortage of water on the days specified in the complaint, but alleging that such shortage was occasioned by causes beyond its control, as hereinafter specified. Defendant also avers that it is at present installing an additional storage reservoir and two additional pumps for the territory affected and that in order to supply complainant—and his neighbors—it has cut off a lower level which formerly derived water through the pipes which now serve complainant and that it has confined the use of such water to the higher levels on which complainant lives.

At the hearing, which was held on August 14, 1912, the Commission asked for the views of counsel on the question whether the jurisdiction to grant the relief prayed for vests in this Commission or in the city of Berkeley. The city attorney of Berkeley argued that the power vests in this Commission. Both complainant and defendant expressed the desire to submit the matter to the Commission, and Mayor Wilson of Berkeley stated that the city was willing that the Commission should decide the case, though desiring to reserve such jurisdiction, if any, as the city might have in similar cases. Under these circumstances, we shall not make the detailed investigation into the question of jurisdiction which we otherwise would have made but shall exercise the jurisdiction which all the parties desire we should assume.

There is but little contradiction as to the material facts of this case. The district affected is that portion of Claremont which lies easterly of a general north and south line running immediately easterly from Hotel Claremont. It is a hilly country, having about twenty-five residences, with some five more now under construction. The district was referred to in the evidence as Zone 1, and derives its water from the Dingee reservoir, which is located in the top of the hilly country east of Piedmont and from the intercounty tunnel between Alameda and Contra Costa counties. From these sources of supply four inch pipe lines run to a point of convergence in the Tunnel road, where the diameter is six inches. Complainant and most of the other residents in this locality are served from four inch pipes which diverge from the Tunnel road main. Several years ago, when the Claremont district was first opened up for building purposes, the entire district was served from these two sources. In 1910, as the population in the westerly portion of the

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district, referred to as Zone 3, increased, that zone was cut off from the system heretofore described and has thereafter been served from the Temescal reservoir. In the same year, a portion of the Garber water supply was diverted to the tanks in the rear of the Claremont hotel and used to supply what was referred to as Zone 2, lying between Zones 1 and 3. The pipe lines which traverse Zone 1 lead to these same tanks and the water flowing through the same was formerly permitted to flow into said tanks and thence into Zone 2. During the early portion of 1912, however, because of frequent complaints as to inadequacy of water supply in Zone 1, defendant decided to conserve for Zone 1 the entire water supply from Dingee reservoir and the intercounty tunnel and consequently shut down a gate in the pipe leading from Zone 1 to said tanks. Defendant has ever since kept that gate closed and has thus prevented conditions of inadequate water supply for Zone 1 which existed in the summers of the two preceding years because of the use of water flowing through Zone 1 and conserved in the lower levels in Zone 2. Notwithstanding these precautions, complainant and his neighbors were without water during May 29, 30 and 31; June 7, and June 27 and 28. Defendant's engineer testified without contradiction that the difficulty the first time was due to the fact that some person unknown to defendant had closed the gate at the Dingee reservoir so as to shut off the water running therefrom into Zone 1; that the second time the pipe line leading from the Dingee reservoir had been broken by a blast exploded by laborers working for the Oakland and Antioch Railway; and that the third time this same pipe line was found to be almost clogged up by eucalyptus roots, necessitating the replacement of the pipe. To further insure a supply of water to Zone 1, defendant has just completed the erection of a 100,000 gallon storage tank to the left of the tunnel road above Claremont at an elevation of some seven hundred and thirty or forty feet. This tank will contain a sufficient supply of water for between three and four days and will also furnish additional fire protection for the district. Defendant has during this year also materially increased the water supply in Zone 2.

The evidence is uncontradicted that during the summer months in the last three years the residents of Zone 1 have suffered considerable inconvenience and annoyance from an inadequate water supply. Complainant testified that during the summer months three years ago the water was off every two or three weeks for from one to three days. The same condition existed during the next year. During this year complainant received no water on the dates hereinbefore specified. Several of complainant's neighbors testified to the same effect. All, however, admitted that since July 1, 1912, the service has been excellent.

At the conclusion of the testimony, complainant stated that he would be satisfied if this Commission made an order forbidding defendant

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from again raising the gate which now prevents the water from Zone 1 from flowing into Zone 2, without having first secured the consent of this Commission. Defendant stated that it would accept and obey such order, provided that it had the right to open the gate in cases of extreme emergency, which it defined to mean fire in Zone 2 or the shutting off of the supply in Zone 2 by breakage of the pipe leading to the tanks or other unforeseen emergency. We find that complainant's offer as thus modified by defendant is a fair solution of the difficulty and recommend that an order be made accordingly.

Some little evidence was introduced at the hearing concerning the need for additional fire protection in the district affected. Defendant interposed the objection that under the law as declared by the Supreme Court of this State in *Niehaus Bros. Co.* vs. *Contra Costa Water Company,* 159 Cal. 305, and *Ukiah* vs. *Ukiah Water and Improvement Company,* 142 Cal. 175, a public distributer of water is under no duty, apart from express contract, to protect its consumers against loss by fire. Defendant nevertheless stated that it would give such protection in so far as it reasonably could do so. We are not ready to admit that the doctrine of those cases, in view of the provisions of the Public Utilities Act, is still the law of this state. On that point we express no opinion. In view, however, of the steps recently taken by defendant with reference to the water supply of Zone 1, particularly the construction of the 100,000 gallon storage reservoir, we shall not at this time make any recommendation on this point.

We submit the following form of order:

ORDER.

A public hearing having been held in the case entitled as above, and evidence having been introduced by both parties, and the case having been submitted, and the Commission finding that the facts as stated in the foregoing opinion are true.

Defendant is hereby ordered to keep closed the gate which now prevents the water from Zone 1, as hereinbefore in the opinion defined, from flowing out of Zone 1 except in case of extreme emergency which is hereby defined for the purpose of this case to mean fire in Zone 2, as hereinbefore in the opinion defined, or the shutting off of the water supply in Zone 2, by breakage of the pipes leading to the tanks or other unforeseen emergency. In so far as the complaint in this case conforms to this order it is hereby sustained and in the other respects it is dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of August, 1912.

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DECISION NO. 183.

IN THE MATTER OF THE APPLICATION OF THE MILL VALLEY AND MOUNT TAMALPAIS SCENIC RAILWAY FOR AN ORDER AUTHORIZING IT TO ISSUE ONE THOUSAND FIVE HUNDRED SHARES OF CAPITAL STOCK.

Application No. 32.

Decided August 23, 1912.

Of the $150,000 capital stock which applicant desires to issue, $78,100 is proposed to be used for the reimbursement of moneys claimed to have been expended from income within the past five years for purposes properly subject to capitalization; $5,000 is proposed to be used to refund outstanding obligations; and the remainder is proposed to be used for construction and betterments. These purposes analyzed and discussed and findings made.

It should be distinctly understood that this Commission does not, in its decision on this application, commit itself to the extent that it will necessarily authorize the capitalization of moneys spent from income whenever the fact of such expenditure for the purposes authorized by law is shown. The Public Utilities Act gives to the Commission in this regard wide discretionary powers. The Commission will on such application always take into consideration the amount of capital stock and of bonds, notes or other evidence of indebtedness already outstanding and will in each case determine on the facts of that case whether, in view of all the facts, including particularly the amount of stock and securities already outstanding, the additional capitalization prayed for should be permitted.

Thomas, Beedy & Lanagan, for applicant.

REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners.*

This is an amended application for an order of this Commission authorizing the issue of a total of 1,500 shares of capital stock for the purposes hereinafter specified.

Applicant was incorporated on January 15, 1896, and owns and operates a scenic railway from Mill Valley in Marin County, along the slopes of Mount Tamalpais to its crest, with a branch line running from Mesa Station, also known as the "Double Bow Knot," to the Muir Woods, on the southerly slope of the mountain. In connection with its railroad, applicant has constructed and operates the Tavern of Tamalpais, near the crest of the mountain, and the Muir Inn at the end of the branch line in the Muir Woods. Applicant also owns and has leased out the tavern at the extreme westerly point of its line of railway, known as West Point. Applicant's chief revenue is derived from passenger earnings from tourists and other sightseers.

Applicant's total authorized capital stock is 2,000 shares of the par value of $100 each, making a total of $200,000. All of this stock has

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been issued. One hundred and ten shares were issued to the promoters for their services, three hundred and seventy-five shares were sold at $110 each and the remaining number of shares were sold at par. Applicant's total authorized bonded indebtedness is $100,000 secured by first mortgage and $100,000 secured by second mortgage, the mortgage or deed of trust in each case running to Union Trust Company of San Francisco. The first deed of trust was executed on April 20, 1899, and the second on October 5, 1908. The bonds in each case bear interest at the rate of 5 per cent and are payable twenty years from date. Of the bonds so authorized, all the bonds of the first authorization, amounting to $100,000, have been issued, but there is on deposit with the Union Trust Company of San Francisco a sinking fund account of $29,688.97 with some accumulated income to redeem the bonds at maturity. Of the second mortgage bonds, bonds of the face value of $30,500 are now outstanding. To redeem these bonds applicant has accumulated a sinking fund of $9,000, with some accumulated income. On June 30, 1911, applicant also owed $10,500 on bills payable and $6,904.04 to sundry creditors. Applicant's statement of assets, as filed with the application as of June 30, 1911, shows a total of $452,944.22. The Commission's engineers have as yet reached no determination on the data which applicant has submitted to them as showing the value of its property, which value applicant now claims to be considerably in excess of said sum of $452,944.22. Before the fire of April, 1906, applicant paid dividends at the rate of 4 per cent per annum. After the fire, no dividends were paid for some four years, but since May 10, 1910, dividends at the rate of 5 per cent per annum have been regularly paid. Earnings in excess of the 5 per cent dividend have been put back into the property or used to create sinking funds to take care of the outstanding bonded indebtedness.

Of the 1,500 shares of capital stock which applicant desires to issue, 781 are to be issued for the reimbursement of moneys claimed to have been actually expended from income within five years next prior to the filing of the application, for the acquisition of property, and the construction, completion, extension and improvement of facilities, under the provisions of section 52*b* of the Public Utilities Act; 50 shares are to be issued to refund an outstanding obligation; and the remaining shares are to be issued for the acquisition of property, and the construction, completion, extension and improvement of facilities. We shall proceed to analyze these various items in detail.

The total of $78,100 for reimbursement of moneys expended from income consists of the following items:

Additions and betterments	$57,875 07
Filling trestles, hitherto charged to operating expense	4,353 99
Invested in sinking funds	16,000 00
	$78,229 06

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The additions and betterments claimed to have been bought from income are as follows:

Spur track—Mesa Station to Muir Woods		$19,409 11
Rolling stock—		
Locomotive No. 5	$7,741 72	
Locomotive No. 7	8,705 73	
Three passenger cars	5,701 69	
Automobile No. 2	2,441 20	
Gravity car No. 6	589 19	
Inspection car	308 12	
Section car	136 53	
		25,624 18
Real estate adjoining Muir Woods		17,000 00
Hotel extension		2,000 00
Tamalpais Tavern—additional furniture and fixtures		387 90
Muir Inn		12,215 41
Muir Inn—furniture and fixtures		3,856 40
Tents and tent furniture and fixtures—Muir Woods		1,717 45
Store building—Mill Valley		106 72
Cabins—West Point		213 86
Telephone line—main line and woods		405 54
Trails		148 65
Wagon road—West Point to Willow Camp		168 95
Willow Camp and Bolinas road extension preliminary survey		1,006 65
Redwood Canyon—wagon roads and trails		3,039 80
Oil tank		373 20
Binoculars		117 00
Filing cabinet		50 00
Angle plates, track bolts and nut-locks—all new construction		534 25
		$88,375 07
Funds secured through sale of 20-year 5 per cent bonds in October, 1908, and February, 1909		30,500 00
		$57,875 07

Section 52*b* of the Public Utilities Act, under which the authorization is sought, provides in part as follows:

> "A public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidence of indebtedness of such public utility, *within five years next prior to the filing of an application with the commission* for the required authorization, for one of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended, and the purposes for which such expenditure was made; provided, that such public

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utility, in addition to the other requirements of law, shall first have secured from the commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that except as otherwise permitted in the order, in the case of bonds, notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses

It will be noted that in the case of an issue of securities to refund money expended from income such moneys must have been expended within five years next prior to the filing of the application. The application in this case is filed May 2, 1912. The period of time to be considered is consequently from May 1, 1907, to May 1, 1912. As applicant's figures covered the period from July 1, 1906, to June 30, 1911, it has been necessary for this Commission's department of statistics and accounts to revise the figures submitted, by subtracting additions and betterments paid for prior to May 1, 1907, and adding those paid for subsequent to June 30, 1911, and up to May 1, 1912. Of the amounts submitted by applicant, the following were expended prior to May 1, 1907:

Spur track—Mesa Station to Muir Woods	$16,768 18
Locomotive No. 5	7,741 72
Inspection car	308 12
Redwood Canyon wagon road	314 50
	$25,132 52

Subtracting this amount from the total of $57,875.07 submitted by applicant and adding $1,136.51 for expenditures for additions and betterments from July 1, 1911, to May 1, 1912, we have a revised total of $33,879.06, applied for in this connection.

We find that because of the unusual character of applicant's business, which consists largely in attracting tourists and other pleasure seekers to Mount Tamalpais and making the mountain accessible to them, its taverns, tents, wagon roads and trails are properly a part of its railway business and that the amounts specified for these items may properly be capitalized, subject to the observations hereinafter contained. The amount of $1,006.65 for preliminary survey for the Willow Camp and Bolinas road extension, which extension has not been made and for which no estimate has been presented under the head of future construction, should be deducted from applicant's estimate, and should not be capitalized, at least until the project has been executed. The other items in the foregoing list, as revised, amounting to $32,872.41, may be allowed.

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Applicant also asks authority to issue capital stock against an item of $4,353.99 for expenditures incurred in connection with filling trestles. These expenditures have been charged on its books to operating expenses. As bearing on the question of what portion, if any, of this amount, may properly be capitalized, we refer to Account A-7—Bridges, Trestles and Culverts—of the classification of expenditures for additions and betterments, as prescribed on July 1, 1910, by the Interstate Commerce Commission for steam roads, and reading as follows:

> "When a bridge or trestle, or a part of a bridge or trestle, is converted into a fill, the cost (estimated if not known) of the bridge or trestle if completely filled, or of such part of it as may be filled, should be credited to this account and charged, less salvage, to operating expenses. Such part of the original structure as would equal in cost the temporary trestling that would have been necessary to the construction of the fill in the first instance should be considered as salvage. The cost of filling, including such salvage, should be charged to Account A-3, Widening Cuts and Fills."

We consider this rule a reasonable one, but the evidence as presented has not been sufficient to enable the Commission to determine what portion of this amount is properly chargeable to additions and betterments. If applicant so desires, it may hereafter present additional evidence as to this item, whereupon the Commission will make an order based upon the principle of segregation established by the Interstate Commerce Commission.

Applicant also asks authority to capitalize the sum of $16,000, which represents amounts taken from income in excess of dividends and invested in sinking funds for the purpose of retiring the bonds under its two mortgages or deeds of trust. Applicant claims that this is money spent from income for the lawful refunding of its obligations and that consequently the item is brought within the provisions of the Public Utilities Act. We have examined the decisions of other railroad and public service commissions, and have communicated directly with both the public service commissions in New York, but have been unable to find any authority for such claim. The case most nearly in point is the application of the Bronx Gas and Electric Company for authority to issue bonds, which application was decided by the Public Service Commission for the first district of New York, on October 26, 1909, under a statute containing the same language as that of the Public Utilities Act hereinbefore quoted. The New York Commission there held that the Commission had no authority, under the statute, to approve an issue of bonds to be used to reimburse the applicant for moneys spent from income in such a way as to deplete the surplus and reserve funds. On principle we find ourselves unable to agree with

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applicant in its contention on this point. The money which applicant has placed in its sinking funds it has derived from the rates paid by the public in excess of dividends. If the principle here contended for be sustained, a utility could start on a shoestring, then collect from the public rates high enough to pay off its entire indebtedness, so that it would own its property free and clear, and then capitalize these same additional rates which the public has paid, and finally use this capitalization in turn before this Commission or elsewhere as a basis for further additional rates. It should be remembered also that this is not a case where it is desired to sell additional capital stock for the purpose of putting the proceeds into the plant. Applicant asks for a straight stock dividend of $16,000 to be paid to its present stockholders in proportion to the amount of stock held by them respectively. As far as any legitimate use of the stock is concerned, the failure to permit the issue of the $16,000 of additional stock will not injure the stockholders. Ten shares of stock worth $100 each have the same intrinsic value as twenty shares worth $50 each. The only advantage of having twenty shares is the possibility of selling them to the public for more than they are worth or to use their face value as distinguished from their real value for rate-fixing or other purposes before this Commission or the courts. This portion of the application will be denied.

It should be distinctly understood that this Commission does not in its decision on this application commit itself to the extent that it will necessarily authorize the capitalization of moneys spent from income whenever the fact of such expenditure for the purposes authorized by law is shown. The Public Utilities Act gives to the Commission in this regard wide discretionary power. The Commission will on such applications always take into consideration the amount of capital stock and of bonds, notes or other evidence of indebtedness already outstanding and will in each case determine on the facts of that case whether, in view of all the facts, including particularly the amount of stock and securities already outstanding, the additional capitalization prayed for should be permitted.

Applicant further desires to sell 50 shares of stock at par to refund an outstanding note in the amount of $5,000 held by the First National Bank of San Francisco and also 669 shares for the acquisition of property and the construction, completion, extension and improvement of its facilities. Of the proceeds of said note, the sum of $3,150 has been paid for certain property which is to be used for a yard in Mill Valley and the remainder was used in payment of current expenses. While section 52 of the Public Utilities Act permits the issue of stocks and securities for the discharge or lawful refunding of the obligations of a public utility, it is clear that such obligations must have been incurred

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for purposes which are proper subjects of capitalization. Consequently, while applicant's prayer will be granted in so far as affects the amount of $3,150 spent for the acquisition of property at Mill Valley, it will be denied with respect to the remaining amount of $1,850, which amount is properly chargeable to operating expenses.

Applicant further presented an itemized list of property which it desires to acquire and a detailed description of contemplated construction, completion, extension, and improvement of its facilities and asked for permission to issue stock at par to the extent of $50,000 at present and additional shares hereafter up to a total of $66,900 to secure funds to pay for such property and improvements. At the hearing it developed that applicant's estimate with reference to certain of these items was entirely too low and that certain items had been omitted. This Commission will be just as ready to increase the amounts asked for by an applicant for proper purposes where it finds that the estimates are too low as it will be to cut down or entirely eliminate items which are excessive or which are unlawful. The items as thus revised and increased with reference to their amounts are as follows:

A new locomotive	$8,755 00
Two new passenger cars	4,250 00
A 600-foot inclined railway from the Muir Inn, located at the terminus of its branch line to the bottom of the canyon known as "Muir Wood," belonging to the Federal Government	9,000 00
Cost of transforming its local train service from steam to electricity	4,028 00
Poles and wires from the Muir Inn to the top of Mount Tamalpais, for conducting light and power	4,000 00
New machine shop	6,000 00
Machinery and tools for new machine shop	6,000 00
Carpenter shop with car shed attached	4,500 00
Cost of lot for above	3,150 00
Grading and filling lot for above	2,500 00
New tie plates	1,100 00
New straps	2,000 00
New ties	3,000 00
Further improvements, not yet definitely fixed upon	717 00
Total	$59,000 00

The item for the cost of transforming local train service from steam to electricity applies only to a small portion of applicant's line of railway running northerly from the town of Mill Valley. The item for poles and wires from the Muir Inn to the top of Mount Tamalpais for conducting light and power is a liberal one in amount. As it now stands, it contemplates the performance of this work by applicant itself. If applicant can enter into some arrangement by which a portion of this expense is to be borne by the company furnishing the light and power, the amount authorized will not be expended to the extent of the difference. The cost of lot for carpenter shop has already been taken care of in this opinion in passing on the note for $5,000, which included this

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item. The tie plates are new plates to be installed where none now exist and the item is a proper one. The straps are to take the place of existing straps which are worn out. This item is properly chargeable to maintenance and should not be capitalized. The same is true as to the item for new ties, which are to take the place of existing worn out ties.

Eliminating the items of which we have disapproved, as above stated, we find that items in the amount of $50,850 for the acquisition of property and the construction, completion, extension, and improvement of facilities may properly be covered by sales of additional capital stock.

The items approved on this application are accordingly as follows:

1. Amounts hitherto expended from income for purposes proper to be capitalized	$32,872 41
2. Discharge of obligation	3,150 00
3. Moneys necessary for acquisition of property and for construction, completion, extension and improvement of facilities	50,850 00
	$86,872 41

We find that the moneys to be derived from the sale of additional capital stock to cover the second and third of the above items are reasonably necessary for such purposes and that the purposes for which stock is hereby authorized to be issued are not in whole or in part reasonably chargeable to operating expenses or to income. Applicant's president testified that the stock could probably be sold at par or over and we are convinced that such is the case. We accordingly recommend that applicant be authorized to issue stock for the purposes and in the amounts hereinafter in the order specified and submit herewith the following form of order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Mill Valley and Mount Tamalpais Scenic Railway for an order authorizing the issue by said company of 1,500 shares of its capital stock to the amount of $150,000 par value, and a hearing having been duly held upon said application and it appearing to the Commission that the money to be procured from that portion of the stock which is herein authorized to be sold is reasonably required for the purposes hereinafter specified, and that the purposes for which said stock is to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Mill Valley and Mount Tamalpais Scenic Railway be, and the same is, hereby authorized to issue its common capital stock in the amounts and for the purposes hereinafter designated and subject to the conditions hereinafter specified, and not otherwise, to wit:

1. For the reimbursement of moneys actually expended from income

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within five years next prior to the filing of the application with this Commission for lawful purposes, the sum of $32,872.41, capital stock to represent the same to be issued at par to the present owners of applicant's capital stock in proportion to the amount of capital stock which they at present respectively own.

2. For the discharge of the obligation of applicant to First National Bank of San Francisco on note for $5,000, the amount of $3,150.

3. For the acquisition of property and the construction, completion, extension, and improvement of its facilities the following amounts, the amount to be spent on each item not to exceed the amount herein authorized without having secured the further consent of this Commission:

A new locomotive	$8,755
Two new passenger cars	4,250 00
A 600-foot inclined railway from the Muir Inn, located at the terminus of its branch line to the bottom of the canyon known as the "Muir Woods," belonging to the Federal Government	9,000 00
Cost of transforming its local train service from steam to electricity	4,028 00
Poles and wires from the Muir Inn to the top of Mount Tamalpais for conducting light and power	4,000 00
New machine shop	6,000 00
Machinery and tools for new machine shop	6,000 00
Carpenter shop with car shed attached	4,500 00
Grading and filling lot for above	2,500 00
New tie plates	1,100 00
Further improvements not yet definitely fixed upon	717 00
	$50,850 00

4. The stock hereby authorized to be issued for the purposes specified in paragraphs 2 and 3 hereof shall be issued for money only at not less than par.

5. Applicant shall keep a true record showing the disposition of each share of capital stock hereby authorized to be issued, and of the proceeds of each share of stock hereby authorized to be sold, showing particularly the purposes to which such proceeds have been applied, and on or before the twenty-fifth day of each month applicant shall make a verified report to this Commission stating the disposition of such stock and of the proceeds thereof, and in this and all other respects applicant shall comply fully with the Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

6. The authority hereby given to issue capital stock shall apply only to stock issued by applicant prior to the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

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DECISION No. 184.

IN THE MATTER OF THE APPLICATION OF INDIAN VALLEY ELECTRIC LIGHT AND POWER COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF STOCK, BONDS AND PROMISSORY NOTES.

Application No. 46.

Decided August 23, 1912.

Applicant asks in its petition authority to issue $100,000 of common stock, $250,000 of bonds, and promissory notes in the sum of $50,000. At the hearing, it developed that these requests were in the alternative and that applicant really desires authority to issue notes in an amount sufficient to permit it to raise the money necessary to make an initial installation of 500 horsepower at Seneca, with the necessary transmission and distribution lines, and also to issue securities for the purpose of discharging certain obligations.

Permission given to the issue of promissory notes in the amount of $65,228, of which $7,000 shall be used for refunding outstanding notes, and the balance for the acquisition of property and for construction and improvements, the entire amount to be secured by a first mortgage.

O. C. Pratt, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Indian Valley Electric Light and Power Company was incorporated on October 7, 1908, with an authorized capital stock of 500,000 shares of common stock. Of the amount so authorized, 339,556 shares have been issued. For the stock issued up to June 30, 1911, the company received cash in the amount of $31,140, certain labor and services and its present water right at Seneca on the north fork of the Feather River. Of the stock sold for cash, a portion was sold at par and other portions at amounts less than par, ranging down to 33⅓ cents on the dollar. The stock issued for labor and services was issued partly for labor on the plant and partly for services in connection with securing certain loans and similar transactions. Of the total of 339,566 shares now issued, 250,998 shares are held by O. C. Pratt, J. R. Jones and S. P. Dunn, and were issued together with a payment of $5,000 in cash for applicant's water right at Seneca, where it is now proposed to develop additional electrical energy. This water right was acquired by Mr. Dunn, and was conveyed by him to the company for the consideration hereinbefore specified. Pratt and Jones at that time had control of the company and they divided their control with Dunn in return for the conveyance of his water right. The actual value of applicant's

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property does not amount anywhere nearly to the par value of the outstanding capital stock.

Applicant has no bonded indebtedness but owes something over $7,000 on two promissory notes, as will hereafter appear.

Since June 14, 1909, applicant has operated and now operates a small plant with a maximum capacity of 60-horsepower, located at Greenville in Plumas County, California. This plant serves the towns of Greenville and Crescent and the United States Industrial Indian Mission, located about three and one half miles southeast from Greenville.

Applicant now plans to install a power plant at its new site near Seneca, at a distance of some seven miles from Greenville. The land here is all forest reserve, and it will be necessary to secure from the Department of Agriculture its permission for the erection of the power plant and of the necessary pipe lines, conduits, and transmission lines, in so far as they are erected upon government property. Negotiations are now pending with the Department of Agriculture to secure this permission. Applicant claims that it has proceeded in good faith in the development of its water right, and that it has a good and sufficient legal title thereto. It is proposed to transmit electrical energy from the new plant to be built at Seneca to Greenville, and also to serve Indian Valley and the mines adjacent thereto. Applicant desires at present to develop 500-horsepower at Seneca and hereafter to increase this development to 2,000-horsepower or over. This Commission instructed one of its engineers to examine the proposed development and the engineer reported that from an engineering point of view, the project is entirely feasible. At the hearing the Commission made careful inquiry into the possible earning capacity of the proposed plant with a view of ascertaining whether or not applicant could reasonably be expected to meet the interest payments on such obligations as it might incur in order to make the contemplated new construction. The Commission finds that there is considerable demand for electric current, both for power and lighting purposes, in the Indian Valley, for farmers who desire to use power for irrigating purposes, and that there is a possibility of selling a considerable amount of power to mines located in the vicinity and also a little for commercial use in some of the small towns in this vicinity. Hitherto applicant has furnished electrical energy for lighting purposes only.

Applicant in the prayer to its amended application asks the authority of this Commission to issue 100,000 shares of common stock, $250,000 face value of bonds, and promissory notes in the sum of $50,000, making a total of $400,000. At the hearing it developed that these requests were in the alternative and that what applicant really desires is authority to issue notes in an amount sufficient to permit it to raise the money necessary to make an initial installation of 500-horsepower at

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Seneca, with the necessary transmission and distribution lines, and also securities for the purpose of discharging certain obligations which will hereafter be referred to in greater detail.

In connection with its proposed development of 500-horsepower at Seneca, applicant presented in its amended application certain estimates of cost. The Commission caused these estimates to be carefully checked over by its engineering department and ascertained that some of them are considerably too low. We append a table showing applicant's estimates and also estimates of this Commission's engineering department as follows:

Items.	Applicant's estimate.		Engineering department's estimate.	
Excavation, 6,600 cubic yards	at $.80=	$5,280 00	at $1.50=	$9,900 00
Lining ditch, labor		1,500 00		1,500 00
Lumber, 25,000 F. B. M.	at $20.00=	500 00		500 00
Corrugated covering, 7,000 sq. ft.	at $.25=	1,750 00		1,750 00
Headgate, material and labor		1,000 00		1,000 00
Fore bay, material and labor		770 00		770 00
Power house building, material and labor—except cement		2,000 00		2,000 00
Spillway, material and labor		500 00		500 00
Power house equipment, material and labor		11,877 00		11,877 00
Transmission lines, 14 miles	at $600.00=	8,440 00	at $1,000.00=	14,000 00
Tramway and hoisting apparatus		1,600 00		1,600 00
Cement, 2,000 bags, f.o.b. Keddie	at $.75=	1,500 00		1,500 00
Freight and cartage		5,000 00		5,000 00
		$41,677 00		$41,677 00
Engineering and contingencies 10 per cent of above				5,189 00
Interest during construction 2 per cent of above				1,142 00
Grand total				$58,228 00

I find that the amounts specified in the estimates of this Commission's engineering department are reasonably necessary for the purposes specified and that said purposes are necessary if applicant's plant at Seneca is to be developed to the extent of 500-horsepower, as contemplated.

Applicant also asks for permission to issue notes to discharge or refund certain obligations which it specifies in its amended application, amounting to a total sum of $31,567.66. Of this amount I find that two notes, one in the amount of $4,000, now held by International Banking Corporation, and another on which $3,000 is now due and which is held by the Butte County Bank, represent moneys which have been spent for the acquisition of property and for the construction, completion, extension, and improvement of facilities, and I recommend that the application be granted with reference to these notes.

The other obligations which applicant desires to refund consist of

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balance of salary claimed to be due to the president and to the secretary, expense account of the president, a claim of S. P. Dunn for service, work and labor, commissions claimed to be due to the president and secretary for services rendered on the sale of stock, legal services rendered by the president to the company, two items of traveling expense in connection with a proposed bond issue which it will not be necessary to issue at present, expenses and legal services connected with the same proposed bond issue and estimated expense to be incurred in placing a proposed stock issue which it will not be necessary to issue at present, and an item for meters, material on hand, taxes and incidentals. While I question the right of applicant to pay certain of these claims at all, it is unnecessary for me to pass on this question for the reason that most of these items are properly chargeable to operating expenses and should be paid out of earnings as soon as the company is able to do so, while the others are for construction expenses which may hereafter be capitalized when the construction work at Seneca has been performed, but not at present. While portions of the item for meters, material on hand, taxes and incidentals may properly be capitalized, applicant has not been able to furnish the items with sufficient particularity to permit capitalization at this time.

Hereafter applicant expects to float a bond issue and to use the proceeds thereof for the purpose of taking up the notes which it now intends to make and also to increase the development at Seneca from 500-horsepower to 2,000-horsepower and to serve additional territory. In the meantime applicant expects to be able to secure on its promissory notes at interest not to exceed 7 per cent the amount of money which it needs to make the necessary development at Seneca.

I recommend that applicant be authorized to issue its promissory notes in the amount of $58,228, at interest not to exceed 7 per cent per annum, for the purpose of acquiring the necessary property and for the construction, completion, extension, and improvement of its facilities in connection with the proposed 500-horsepower development at Seneca, in the amounts and for the purposes hereinbefore separately designated in the estimate of this Commission's engineering department and also similar promissory notes in the amount of $7,000 to refund its outstanding notes now held by International Banking Corporation and the Butte County Bank, and that applicant be authorized to execute a first mortgage on all of its property in order to secure the payment of said notes.

I submit herewith the following form of order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Indian Valley Electric Light and Power Com-

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pany for an order of this Commission authorizing the issuance by said company of bonds, stock, and promissory notes in the amounts specified in the application and a hearing having been held upon such application, and the Commission finding that the money to be procured from the issue of the promissory notes hereafter authorized is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of facilities and for the discharge and lawful refunding of applicant's obligations as hereinafter in greater detail specified, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Indian Valley Electric Light and Power Company be and the same is hereby authorized to issue its promissory note or notes to be secured by first mortgage upon all of its property, in the amount of $65,288 or such portion thereof as may be necessary for the purposes hereinafter specified, said notes to bear interest at a rate not to exceed 7 per cent per annum, upon the conditions following and not otherwise, towit:

1. Said promissory note or notes shall be issued so as to net applicant the face value thereof.

2. The proceeds of said promissory note or notes shall be applied only to the following purposes, that is to say:

(*a*) For the acquisition of property and the construction, completion, extension and improvement of its facilities in connection with proposed Seneca development amounts not to exceed those hereinafter specified for each of the following items, unless the consent of this Commission shall theretofore have been obtained for a modification of such amounts:

Excavation, 6,600 cubic yards, at $1.50	$9,900 00
Lining, ditch, labor	1,500 00
Lumber, 25,000 F. B. M., at $20.00	500 00
Corrugated covering, 7,000 square feet, at 25 cents	1,750 00
Headgate, material and labor	1,000 00
Fore bay, material and labor	770 00
Power house building, material and labor, except cement	2,000 00
Spillway, material and labor	500 00
Power house equipment, material and labor	11,877 00
Transmission lines, 14 miles, at $1,000	14,000 00
Tramway and hoisting apparatus	1,600 00
Cement, 2,000 bags, f. o. b. Keddie at 75 cents	1,500 00
Freight and cartage	5,000 00
	$51,897 00
Engineering and contingencies, 10 per cent of above	5,189 00
Interest during construction, 2 per cent of above	1,142 00
	$58,228 00

(*b*) For the discharge and lawful refunding of applicant's obligations, namely, note of $4,000 held by International Banking Corporation and not of $3,000 held by Butte County Bank, the total sum of

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$7,000. Applicant will be required to secure the cancellation of the mortgage or mortgages now securing said notes so that its new mortgage will be a first lien on all its property.

3. Applicant shall keep a true record showing the disposition of the promissory note or notes hereby authorized to be issued and of the proceeds of each thereof, showing particularly the purposes to which such proceeds have been applied, and on or before the twenty-fifth day of each month, applicant shall make a verified report to this Commission stating the disposition of such promissory note or notes and of the proceeds of each thereof and in this and all other respects applicant shall comply fully with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

4. The effectiveness of this order is conditioned upon the prior payment by applicant of the minimum fee specified in section 57 of the Public Utilities Act.

5. The authority hereby given to issue promissory notes shall apply only to notes issued by applicant prior to the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

DECISION No. 185.

IN THE MATTER OF THE APPLICATION OF IMPERIAL TELEPHONE COMPANY FOR PERMISSION TO INCREASE THE RATES FOR TELEPHONE SERVICE IN IMPERIAL COUNTY, CALIFORNIA.

Application No. 55.

Decided August 23, 1912.

REPORT OF THE COMMISSION.

ORDER DISMISSING APPLICATION.

Applicant having filed with this Commission its written request for the dismissal of the application entitled as above,

It is hereby ordered that said application be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 23d day of August, 1912.

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DECISION No. 186.

IN THE MATTER OF THE APPLICATION OF THE INLAND NAVIGATION COMPANY FOR AN ORDER AUTHORIZING ISSUANCE OF STOCK.

Application No. 105.

Decided August 23, 1912.

Upon a rehearing, application for modification of the original order denied.

E. J. Linden, for applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This application came on regularly for hearing on June 29, 1911, and as a result of that hearing the Commission granted applicant permission to issue one hundred and twenty (120) shares of stock of the par value of twelve thousand (12,000) dollars. Thereafter applicant asked for a rehearing, alleging that it had expended approximately thirty-five hundred (3500) dollars in refitting its vessel, which amount was not mentioned at the first hearing.

The rehearing was granted and was held on August 1, 1912. On the testimony of Mr. E. J. Linden, secretary and manager of the company, that the sum above mentioned had been expended in refitting the ship, I was prepared to recommend that an additional issue of stock be permitted to the extent of thirty-five (35) shares, having a par value of thirty-five hundred (3500) dollars. An opinion to that effect was prepared but before it could be presented to the Commission for approval one A. M. Panzer came to the office of the Commission and stated that he had been induced to buy stock in the company upon the promise of being made master of the ship; that the company had lost money from the start; that the Sperry Flour Company had canceled its contract with applicant, which contract had been represented to the Commission as being valuable, and which value the Commission was asked to take into consideration in rendering its decision on the application; that the ship was now out of commission and tied up in Oakland Channel to be sold at the earliest opportunity; and that the company had apparently ceased to do business.

Upon receiving this information, I arranged to have Mr. Linden again appear before me, at which time I read him the statement made by Captain Panzer, which statement is filed with the papers in the case.

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Mr. Linden denied many of the statements made by Panzer, but admitted that the Sperry Flour Company had canceled its contract and that the company had lost money in running the boat, and that the boat was tied up and for sale, as stated by Panzer. Under the circumstances, I stated to Mr. Linden that I could not recommend that the Commission grant permission for any further issuance of stock; that if they sold the boat, distribution could be made on the present stock issued; and that if they kept it and finally got into a position where it was being run at a profit they could again come to the Commission on the matter of issuing more stock.

I recommend the following form of order:

ORDER.

Applicant having filed with this Commission its application for a rehearing in the proceeding entitled as above, and a rehearing having been duly held, and this Commission finding that there is no sufficient reason for modifying its order heretofore entered in said proceeding, and finding that the facts are as stated in the opinion and order heretofore rendered.

It is hereby ordered that said application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

DECISION No. 187.

IN THE MATTER OF THE APPLICATION OF THE MOUNT KONOCTI LIGHT AND POWER COMPANY FOR A CERTIFICATE OR CERTIFICATES UNDER SECTION 50A OF THE PUBLIC UTILITIES ACT OF THE STATE OF CALIFORNIA, THAT THE PRESENT OR FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR WILL REQUIRE THE CONSTRUCTION OF TRANSMISSION AND DISTRIBUTION LINES AND EQUIPMENT FOR ELECTRIC SERVICE IN THE COUNTY OF LAKE, STATE OF CALIFORNIA, AND IN THE TOWNS OF UPPER LAKE, KELSEYVILLE, AND OTHER POINTS AND ADJACENT RESORTS IN THE COUNTY OF LAKE; AND IN THE MATTER OF THE APPLICATION OF

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SAID CORPORATION FOR A CERTIFICATE OR CERTIFICATES UNDER SECTION 50B OF SAID ACT THAT THE PRESENT OR THE FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR WILL REQUIRE THE EXERCISE OF THE RIGHT OR PRIVILEGE OF CONSTRUCTING, OPERATING AND MAINTAINING TRANSMISSION AND DISTRIBUTION LINES AND EQUIPMENT FOR ELECTRIC SERVICE IN THE COUNTY OF LAKE, UNDER THE FRANCHISE GRANTED TO SAID CORPORATION BY THE BOARD OF SUPERVISORS OF SAID COUNTY PRIOR TO MARCH 23, 1912; AND IN THE MATTER OF THE APPLICATION OF SAID CORPORATION FOR A PERMIT OR PERMITS UNDER PROVISO CONTAINED IN SECTION 50B OF SAID ACT TO PROCEED TO THE COMPLETION OF THE WORK OF CONSTRUCTION OF TRANSMISSION AND DISTRIBUTION LINES AND EQUIPMENT FOR ELECTRIC SERVICE IN THE COUNTY OF LAKE, STATE OF CALIFORNIA, BEGUN PRIOR TO MARCH 23, 1912 BUT NOT HITHERTO ACTUALLY EXERCISED, AND FOR PERMIT OR PERMITS TO EXERCISE THE RIGHT OR PRIVILEGE OF OPERATING AND MAINTAINING SAID LINES AND EQUIPMENT IN SAID LAST NAMED COUNTY AND TOWNS UNDER SAID PERMIT OR PERMITS AFTER SAID LINES HAVE BEEN COMPLETED.

Application No. 147.

Decided August 23, 1912.

Application dismissed on the ground that it is not necessary for applicant to secure from the Commission a certificate of public convenience and necessity, for the reason that applicant's proposed construction work is to be performed entirely in territory which is not at present being served by a utility of like character.

H. C. Keeling, for applicant.
Jas. A. Gunn, as protestant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The hearing of this application develops the following facts: In 1910, Mr. J. L. Davis looked over Lake County, California, with a view of supplying the people of that county with electricity for heat, light and power. Thereafter, to wit, on March 3, 1911, said J. L. Davis and J. A. Foster, who had become associated with said Davis, entered into an agreement with the Snow Mountain Water and Power Company by the

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terms of which agreement said Davis and Foster were to purchase from the said Snow Mountain Water and Power Company electric current for transmission to and distribution in said Lake County, California, for the purposes aforesaid. Immediately after entering into said contract, said Davis and Foster caused a survey to be made from the town of Hopland, Mendocino County, California, to the town of Lakeport, Lake County, California, said survey being for the purpose of determining the location of the line which said Davis and Foster proposed to build for the transmission and distribution of electric current to the people of Lake County, California. Said survey was completed April 2, 1911, and work was immediately begun on the building of said line. Said line was completed and the current turned on and the service to the people of Lakeport and vicinity was begun on August 7, 1911.

In the mean time, to wit, on April 3, 1911, said Davis and Foster applied to the board of supervisors of the county of Lake, California, for a franchise for the Mount Konocti Light and Power Company, a corporation, which they proposed to form and which they did form on April 25, 1911, as evidenced by copy of the articles of incorporation filed in the pleadings of this application. This franchise was sold to the Mount Konocti Light and Power Company on June 5, 1911, which action was passed and approved by the board of supervisors by ordinance No. 152 (copy of which is filed with pleadings) September 8, 1911. By the terms of this franchise said Mount Konocti Light and Power Company was authorized to build transmission and distribution lines along and upon the public highways, streets and alleys, and in the several unincorporated towns and villages in Lake County, California, for the purpose of distributing electricity for light, heat and power in said territory. The testimony shows that applicant continued its preparation for building to Kelseyville and other towns in Lake County, California, such preparations consisting of surveys, the purchase of material, such as poles, wire, etc.

In June, 1912, the Railroad Commission of California was advised by Mr. Jas. A. Gunn, Jr., of Kelseyville, Lake County, California, that he was prosecuting the work of developing electric power on Kelsey Creek in said county by hydroelectric power, for the purpose of serving the people of said Lake County, and that said Mount Konocti Light and Power Company was invading what he called his territory, contrary to the provisions of the Public Utilities Act. Both the Mount Konocti Light and Power Company and Mr. Jas. A. Gunn, Jr., were ordered to discontinue all work until the matter could be investigated by the Railroad Commission. This investigation was held in the town of Lakeport, county of Lake, California, at 10 o'clock a. m., August 16, 1912. The evidence discloses that as before stated the Mount Konocti Light and

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Power Company had received its franchise, completed its transmission line from Hopland to Lakeport, and were serving the people in and adjacent to Lakeport previous to the effective date of the Public Utilities Act, and that in extending its line to Kelseyville and elsewhere in said county of Lake, California, it was proceeding according to law, as expressed in section 50(*a*) of the Public Utilities Act, a portion of which reads as follows:

> "*Provided*, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city or county, or city or town within which it shall have heretofore lawfully commenced operations, or for an extension into territory either within or without a city and county or city and town, and not theretofore served by a public utility of like character."

No public utility company was or is serving any portion of Lake County, California, except the Mount Konocti Light and Power Company line serving the territory in and about Lakeport, as heretofore described. Very recently Mr. Jas. A. Gunn, Jr., of Kelseyville, Lake County, California, who appeared as a protestant against the granting of this application, and who is also an applicant for a certificate that present or future public convenience and necessity will require the building of a line which he proposes to build and operate by hydro-electric power as before stated, to supply the people of Lake County, California, installed in the rear of his store in Kelseyville, Lake County, California, a small automobile gas engine by means of which he generates electricity and lights for his store, but such installation and service cannot be regarded as that referred to in the act. It is evident, therefore, that the Mount Konocti Light and Power Company is not required under the law, as expressed in section 50(*a*) of the Public Utilities Act, to procure a certificate of public convenience and necessity from this Commission.

At the hearing of the case many residents and users of electricity in and adjacent to Lakeport, California, voluntarily appeared and testified to the excellent service given by the Mount Konocti Light and Power Company, and that its rates and charges were satisfactory.

While these rates will be permitted to be charged for the present, this Commission declines to approve of them as reasonable rates. The contract with the Snow Mountain Water and Power Company discloses the fact that the Mount Konocti Light and Power Company pays the Snow Mountain Water and Power Company 1 cent per kilowatt for electric current. Its price for lighting purposes are 10 cents per 1000 watts, minimum $2.75 per month for business houses, and 11 cents per 1000 watts, minimum $1.75 per month for residences. Its charges for

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power ranges from a maximum of 9 cents per kilowatt hour to 3 cents per kilowatt hour with a minimum of $2.50 per horsepower per month. By the terms of the contract, the Mount Konocti Light and Power Company will be required to pay to the Snow Mountain Water and Power Company a minimum of $200 per month, commencing May 1, 1913.

In making his protest against the granting of the application to the Mount Konocti Light and Power Company, Mr. Gunn presented a scale of charges which he proposed to put into effect, very much less than those being charged by the Mount Konocti Light and Power Company, but this Commission is not satisfied as to Mr. Gunn's financial ability to carry his plans to a successful conclusion.

While the fact that it is not necessary for the Mount Konocti Light and Power Company to procure a certificate that present or future public convenience and necessity require or will require the extension of its line in Lake County, California, probably renders it unnecessary to refer to the financial condition of this company, it may not be out of place to do so briefly. The company is incorporated for $50,000, represented by 500 shares of stock, par value of $100 per share. Of this amount, 300 shares have been issued, and $30,000 paid in and expended in the building of the line. The funds necessary to complete the line will be provided by Mr. J. M. Hastings who will either take the note of the company or receive stock of the company for such advances. The 300 shares have been subscribed for and issued to:

A. V. Joslin, 64 shares.
J. A. Foster, 91 shares.
Mrs. E. P. Foster, 5 shares.
J. M. Hastings, 87 shares.
A. C. Hastings, 10 shares.
W. F. Davis, 1 share.
Donna K. Davis, 1 share.
J. L. Davis, 41 shares.

The incorporators and large stockholders are men of character and standing and may be expected to be successful in their undertaking. I recommend that it be the decision of this Commission that for the reasons before stated, the Mount Konocti Light and Power Company be notified that it is not required under the law to procure from this Commission a certificate of public convenience and necessity applied for, and submit the following form of order:

ORDER.

Mount Konocti Light and Power Company having filed with this Commission its application for a certificate of public convenience and necessity under the provisions of section 50 of the Public Utilities Act

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affecting construction work within Lake County, and a public hearing having been held upon such application, and it appearing to the Commission that this is not a case in which it is necessary for applicant to secure from this Commission its certificate under said section of the Public Utilities Act, for the reason that applicant's proposed construction work is to be performed entirely in territory which is not at present being served by a utility of like character,

It is hereby ordered that said application be and the same is hereby dismissed without prejudice to applicant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

DECISION No. 188.

IN THE MATTER OF THE APPLICATION OF THE LOS GATOS ICE, GAS AND ELECTRIC COMPANY AND THE PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE LOS GATOS ICE, GAS AND ELECTRIC COMPANY TO TRANSFER TO THE PACIFIC GAS AND ELECTRIC COMPANY ITS ENTIRE PROPERTY WITH CERTAIN EXCEPTIONS.

Application No. 154.

Decided August 23, 1912.

Application for approval of transfer of property granted upon condition that the purchase price shall not be used before this Commission or any other public authority as representing, for rate fixing or for any other purpose, the present value of the property transferred.

C. E. Hume, for the Los Gatos Ice, Gas and Electric Company.
Chas. P. Cutten, for the Pacific Gas and Electric Company.
R. P. Doolin and *Geo. W. Turner,* for the board of trustees of the town of Los Gatos.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

It was shown at the hearing of this application, as is also shown by Exhibit "A" in the pleadings, that the stock in the Los Gatos Ice, Gas

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and Electric Company is largely owned by G. W. Hume Company; that the company came into existence through the G. W. Hume Company extending electric service from its farm or ranch adjacent to the town of Los Gatos and serving said town of Los Gatos with arc lights. Afterwards the Los Gatos Ice, Gas and Electric Company was incorporated and engaged in the manufacture and sale of both gas and electricity in the city of Los Gatos and in the territory lying between Los Gatos and Mountain View, all in Santa Clara County, California. The company owns and operates a small hydroelectric station of approximately two hundred horsepower and a gas plant with a daily capacity of thirty thousand cubic feet of gas. It purchases from the Pacific Gas and Electric Company all of the electrical power required to supply its customers over and above the amount generated by the small hydroelectric plant before mentioned, the amount of such purchase being about 18,000 kilowatt hours per month.

The Los Gatos Ice, Gas and Electric Company states as its reason for desiring to sell that owing to the many other interests of the G. W. Hume Company, it is not able to keep pace with and supply the increasing demands of the consumers and inhabitants of the territory which it is supplying with electricity and gas, and that the stockholders are not willing to increase their investment in the company for that purpose, that it does not believe the company can successfully float a bond issue in competition with larger and more progressive corporations and that it believes it is to the best interests of the Los Gatos Ice, Gas and Electric Company and of the people in the territory which it is serving that the sale to the Pacific Gas and Electric Company be consummated.

The rates which the Los Gatos Ice, Gas and Electric Company is charging to its consumers are for lighting purposes:

Less than 200 kilowatts, 10 cents per kilowatt hour per month.
200 to 300, 9 cents per kilowatt hour per month.
Over 300 to 500, 8 cents per kilowatt hour per month.
Over 500, 7 cents per kilowatt hour per month.

For business houses the rate is the same. For power, 3 cents to 5 cents per kilowatt hour, according to the quantity used, with a minimum of $1.50 per month. Its rates for gas are:

First 1,600 cubic feet, $2.00 per 1,000 cubic feet.
Over 1,600 cubic feet to 10,000 cubic feet, $1.60 per thousand cubic feet.
Over 10,000 cubic feet, $1.50 per thousand cubic feet, minimum of 40 cents per month.

As a reason for desiring to purchase the Los Gatos Ice, Gas and Electric Company, the Pacific Gas and Electric Company states that it is now engaged in largely increasing its capacity by the construction of a very large hydroelectric plant on Bear River in Placer County, which will increase such capacity 40,000 kilowatt hours and that it is desirous of securing a market for the energy developed by this increased

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capacity; that it is already furnishing gas and electricity in Santa Clara County and that it can furnish the residents of the territory in and adjacent to Los Gatos with electricity at at least 25 per cent less than they are now paying to the Los Gatos Ice, Gas and Electric Company; and that it will improve the service both as to gas and electricity and believes that it can also make liberal reductions in the price of gas to consumers. Mr. R. P. Doolin and Mr. Geo. W. Turner, members of the board of trustees of the town of Los Gatos, appearing at the hearing for said board, stated that the people of Los Gatos had no objection to the sale and purchase being approved and that in fact, they considered it would be greatly to the advantage of the people of Los Gatos and vicinity. They were anxious to learn from the representative of the Los Gatos Ice, Gas and Electric Company or from the Pacific Gas and Electric Company what valuation had been placed upon that portion of the plant of the Los Gatos Ice, Gas and Electric Company lying within the municipality of Los Gatos. The representatives of these companies maintained that no segregation as to value had been made and they could not therefore give the trustees this information. The price to be paid for the stock of the Los Gatos Ice, Gas and Electric Company by the Pacific Gas and Electric Company is one hundred eighty-seven thousand sixty-two and 51/100 (187,762.51) dollars, which the representatives of the companies testified was the reasonable value of said property. In authorizing this sale at said price it should be distinctly understood that this Commission has not valued the property to be sold, and this Commission's authorization should be subject to the express condition that the price to be paid shall not be used before this Commission or elsewhere as representing, for rate fixing or for any other purpose, the real present value of the property, or as bearing any necessary relation thereto.

I recommend that, as provided in section 51*a* of the Public Utilities Act, the Commission authorize the sale and transfer by the Los Gatos Ice, Gas and Electric Company of its stock to the Pacific Gas and Electric Company under the conditions set forth in the contract copy of which is filed with the pleadings.

I submit the following form of order:

ORDER.

Los Gatos Ice, Gas and Electric Company and Pacific Gas and Electric Company having filed with this Commission their application for an order authorizing the Los Gatos Ice, Gas and Electric Company to sell, grant and transfer to the Pacific Gas and Electric Company, for the sum of $187,762.51, the whole of its property, both real and personal, including its lands, franchises, gas and electric plants and systems, including distribution systems, contracts for the purchase and

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sale of gas, and electricity, machinery, apparatus, tools, materials, and supplies, in use or intended for use in conducting any part of its business, except money standing to its credit with any bank or banker or in the possession of its officers and except its bills and accounts receivable for gas, electricity and materials sold and delivered and services rendered prior to the delivery of the conveyances transferring and conveying the property; and a public hearing having been held on said application, and the town of Los Gatos having been represented thereat by two of its town trustees; and it appearing that public convenience and necessity will be subserved by the grant of the application,

It is hereby ordered that said application be and the same is hereby granted, subject to the following express condition precedent:

The price for which said property is to be purchased, namely, $187,762.51, shall not be used before this Commission or any other public authority as representing, for rate fixing or for any other purpose, the present value of the property of Los Gatos Ice, Gas and Electric Company, or as bearing any necessary relation thereto. The purchase of said property by Pacific Gas and Electric Company will be taken as a consent by that company to this condition.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

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DECISION NO. 189.

IN THE MATTER OF THE APPLICATION OF JAS. A. GUNN, JR., FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR WILL REQUIRE THE EXERCISE OF THE RIGHT AND PRIVILEGE HERETOFORE GRANTED, A COPY OF WHICH AND THE APPLICATION THEREFOR IS HERETO AFFIXED AND MADE A PART OF THIS APPLICATION.

Application No. 162.

Decided August 23, 1912.

Held, That, in so far as the application herein is for authority to furnish service in certain territory now being served by an existing company, the application should be denied; that, so far as authority is asked to furnish service in certain territory not actually being served by another utility of like character, applicant has the right to furnish service without the approval of this Commission.

Jas. A. Gunn, in person, for applicant.

H. V. Keeling, representing Mount Konocti Light and Power Company, for protestant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this application, Jas. A. Gunn, Jr., of Kelseyville, Lake County, California, asked for a certificate under section 50*a* of the Public Utilities Act, that present or future public convenience and necessity will require the exercise of the right and privilege expressed in a franchise granted to said applicant by the board of supervisors of Lake County, California, to furnish electricity to the people of Lake County, California, for heat, light and power.

The testimony shows that applicant intends to develop electricity by water power and that on February 7, 1911, he filed a claim for the waters of Kelsey Creek, Lake County, California, for that purpose, that he applied for and received a franchise from the board of supervisors of Lake County, California, which franchise was sold to him on October 3, 1911, and the ordinance approving same was passed by the board of supervisors of Lake County, California, October 5, 1911. He testifies that within sixty (60) days from the date of filing on the waters of Kelsey Creek he began work, such work consisting of building two ditches, of which one is two and one quarter miles long, and the other one and one quarter miles long; that he erected poles for a distance of one mile and that he found difficulty in securing money to

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prosecute the building of his line owing to the fact that the Mount Konocti Light and Power Company was building into Lake County, California. He claims that he now has wire and material enough on hand to complete the line to supply the town of Kelseyville, where his poles are already erected. By means of a small automobile gas engine, he is now developing electricity to light his store in Kelseyville, and he testifies that his brother has a 50-horsepower marine engine, and that if his application were granted he will immediately complete his line in Kelseyville and install said 50-horsepower marine engine, by which to develop electricity to serve the people of Kelseyville while his hydroelectric plant is being completed. He testifies that he has purchased a hydroelectric plant for $1,500 from the Cloverdale Light and Power Company, that the value of his plant is from $8,000 to $10,000, and that it is of sufficient capacity to serve the people of Lake County, California, with electricity for heat, light and power. He gives his financial condition as follows:

ASSETS.

120 acres of land in section 25, township 13, north, range 9, west, M. D. M., Lake County, California	$2,000 00
Equity in store building and lot in town of Kelseyville	3,000 00
Stock of general merchandise	6,000 00
Teams, harness and wagons	1,000 00
Solvent accounts outstanding	2,500 00
Hydroelectric plant and machinery	8,000 00
Wheat crop now being harvested	800 00
	$23,300 00

LIABILITIES.

Class 1. Chattel mortgage on hydroelectric machinery, given to secure promissory note for $500 under date of June 14, 1912, to Cloverdale Light and Power Company. Due June 14, 1914. Interest, 6 per cent per annum	$500 00	
Class 2. Promissory note, date January 11, 1910, due January 11, 1914, renewable at option of payor, interest 5 per cent per annum, payee, James A. Gunn (father)	930 00	
Note, dated June 14, 1912, due one day after date, payment to be called for September 15, 1912. Interest 8 per cent, payee, N. Hurlbutt	800 00	
Promissory note, past due, interest 8 per cent per annum, payee, Baker & Hamilton	200 00	
Promissory note, past due, interest 8 per cent per annum, payee, Mrs. J. H. Brown	200 00	
Class 3. Balance due to complete equity in store building	1,900 00	
Balance due for merchandise	1,500 00	
	$6,030 00	$23,300 00
		6,030 00
Total assets in excess of liabilities		$17,270 00

All interest on above notes for the last fiscal year to the amount of $81.00 has been paid.

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It will be seen that his financial condition is not such as to convince the Commission that he will be able to carry out his plans, but it should be stated that he testifies that he has a party willing to put in the capital necessary to complete the line and develop the hydroelectric energy if his application is granted.

The Mount Konocti Light and Power Company appeared in this hearing as protestant and it was stipulated that the testimony offered by the Mount Konocti Light and Power Company in Application No. 147, tending to show that that company was not only better prepared financially to serve the people of Lake County, California, with electricity but that the equities as to priority of beginning work and obtaining franchises were with the Mount Konocti Light and Power Company, should be considered as evidence for said Mount Konocti Light and Power Company in protesting against the granting of this application. The circumstances surrounding this application, while not exactly similar to those of Application No. 147, are somewhat analagous in that applicant asks to build his line in Kelseyville, Highland and other territory covered by the franchise granted by the board of supervisors of Lake County, California, all of which territory is not at present served by a public utility of like character; but he also desires to build into Lakeport which the Mount Konocti Light and Power Company has been serving for the past year, as appears in this Commission's opinion in Application No. 147 of the Mount Konocti Light and Power Company.

As to such territory not now served by any other public utility, applicant does not require a certificate of public convenience and necessity from this Commission, as was decided in Application No. 147. As to Lakeport and the territory adjacent thereto now being served by the Mount Konocti Light and Power Company, I am of the opinion that present and future public convenience and necessity do not and will not require the building of a line by applicant to serve the people with electricity, and I therefore recommend that as to said territory in and adjacent to Lakeport, the application be denied and that applicant be notified that he does not require a certificate from this Commission for the remainder of the territory in question.

I submit herewith the following form of order:

ORDER.

Jas. A. Gunn, Jr., having filed with this Commission his application for a certificate of public convenience and necessity under the provisions of section 50 of the Public Utilities Act permitting him to transmit and distribute electrical energy throughout Lake County, California, and a public hearing having been held on said application,

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It is hereby ordered as follows:

(1) That, in so far as said application is for authority to serve the town of Lakeport and territory adjacent thereto now being served by the Mount Konocti Light and Power Company, or any other light or power company, said application is hereby denied, for the reason that the Commission finds that public convenience and necessity does not demand that applicant serve said territory; and,

(2) Said application, in so far as it asks authority to serve Kelseyville and other portions of Lake County not actually being served by another utility of like character, is hereby denied without prejudice to applicant, for the reason that as to such territory applicant has the right to serve the same without having first secured from this Commission a certificate of public convenience and necessity.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

DECISION No. 190.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS THE ANTIOCH–KNIGHTSEN COUNTY ROAD ABOUT TWO MILES EAST OF THE TOWN OF ANTIOCH, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 193.

Decided August 23, 1912.

REPORT OF THE COMMISSION.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having on August 19th, 1912, filed with the Commission its application for permission to construct at grade a spur track across the Antioch-Knightsen county road about two miles east of the town of Antioch, Contra Costa County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that authority has been secured from the board of supervisors of Contra Costa County, California, to construct the crossing at grade,

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and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing; and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to the Atchison, Topeka and Santa Fe Railway Company to construct a spur track at grade across the county road leading from Antioch to Knightsen at a point about two miles east of Antioch, and opposite the dividing line between lands owned by the said railway company and the Parkinson estate; said spur track to serve the private interests of the E. B. and A. L. Stone Company, as shown by the maps attached to the application, and to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, and the expense of its maintenance hereafter in good and first-class condition, shall be borne by the said railway company.

(2) The crossing shall be constructed of sufficient length to accommodate the public, not less than fifty (50) feet in length, and shall be ballasted with gravel or stone or suitable oil macadam, and provided with the necessary plank or guardrails and in every way made safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 23d day of August, 1912.

DECISION NO. 191.

FRANK WILLIAMS AND JOHN W. HANNAY
vs.
LOS ANGELES AND SAN DIEGO BEACH RAILWAY COMPANY.

Case No. 265.

Decided August 23, 1912.

Complaint alleges that respondent's passenger and freight rates are unjust and unreasonable, and, in some respects, discriminatory, and its service and equipment antiquated and inadequate. Upon inquiry into the value of the property and the income from operation, the Commission found that respondent is at present earning at least a reasonable return from the investment, though for the two preceding years it operated at an actual deficit.

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Held, That the reasonable reduction in passenger rates would give a marked impetus to the building up of the country along the line of respondent's road, and will increase, instead of decrease, defendant's revenues and net profits. Reduction ordered.

Held, That no satisfactory evidence was introduced to sustain the complaint as to defendant's freight rates.

Held, That improvements made by respondent, during the proceedings herein, in the operation of its trains reasonably meet the demands of the traveling public for approved service, except that trains should be stopped under certain conditions at Seaside.

Held, That respondent's rolling stock is out of date and inadequate to meet the traveling conditions, but, in view of the very evident need for electrifying the railroad, no order should be made concerning the acquisition of new or additional steam or gasoline equipment.

Frank Williams, for complainant.
Leovy & Leovy, for defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

The complaint in this case attacks defendant's passenger rates, freight rates, service and equipment. The passenger rates are alleged to be unjust and unreasonably high and discriminatory as between various localities on defendant's line of railway. These rates are alleged to be so high that owners of property at Pacific Beach, Bird Rock and other points on defendant's line of railway are unable to build and live on their property. The freight rates are alleged to be unreasonable and the service and equipment are alleged to be inadequate. Particular complaint was made at the hearing that the equipment is out of date and unserviceable and that sufficient trains are not run to serve the needs of the public. Complaint is also made that all of defendant's cars and trains do not stop at the station of Seaside, and this Commission is requested to direct defendant to stop all its trains at Seaside, and to print the names of all of its stations, including Seaside, on its time tables and conductor's tickets. Defendant in its answer denies all the material allegations of the complaint, and avers that all of its rates are just and reasonable and non-discriminatory, and that its service and facilities are adequate. The hearing was held on June 3, 1912, in San Diego. Subsequently, in response to the Commission's request, defendant filed a statement dated July 2, 1912, showing in detail from the beginning the cost of the construction and acquisition of the railway property now being operated by it. Being convinced that important material facts in this case were not as yet before the Commission, I directed the Commission's auditor to make an examination of defendant's books. The examination has been made and the auditor's report is now at hand.

I find that the relation which exists between defendant and the

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people living along its line of railway is one of disadvantage to both. Neither side has been willing to help the other as it should. Defendant has in times past failed to provide proper shelter for its passengers or their property, or to attend properly to their comfort or to treat them with the courtesy and consideration which the owners of a property devoted to the public service owe to the public. Defendant's passenger rates have been higher than an enlightened business policy would justify, and have contributed to a considerable extent to retard the development of the territory which defendant serves, while other sections adjacent to San Diego have gone forward with leaps and bounds. On the other hand, I find that members of the public have made demands on the defendant which have been out of all reason in view of defendant's financial condition, and that the impressions which quite a number of defendant's patrons entertain concerning the cost of its property and its net earnings vary widely from the truth. It is clear to me that the solution of the problems which confront defendant and its patrons lies largely in electrifying the railway, either by its present owners or by capitalists who may be willing to take over the property, and to spend the $100,000 or thereabouts which will be necessary to this end; but I am equally clear that it may be difficult to accomplish this desired result unless defendant and its patrons forget their past differences and work together for the common good. In view of the widely diverging views concerning the material facts of this case, and prompted by an earnest hope that a full presentation of the facts may remove existing misapprehensions and misunderstandings and induce the parties henceforth to work together, I shall present the facts in greater detail than is usual in cases of this kind.

The Los Angeles and San Diego Beach Railway Company owns and operates a line of broad gauge railway running between the foot of C street in San Diego and La Jolla on the Pacific Ocean, 14.1 miles. The company also owns and operates a line of street railway of about 1.8 miles in the business portion of the city of San Diego, running from its depot at the foot of C street easterly along C street to Sixth street, and thence southerly and southeasterly to the tracks of the San Diego and Southeastern Railway at the foot of Ninth street. Until recently steam has been the sole motive power used on what may be called the La Jolla line, between the foot of C street, in San Diego, and La Jolla, but within the last few years defendant has bought two gasoline motor cars, which now carry a large portion of the passenger traffic. Defendant's street railway line in the business portion of San Diego is operated by electricity.

The first portion of the line of railway now owned and operated by defendant was a street railway which ran from Arctic and D

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streets in San Diego to Washington Square Plaza in Old Town, and which was constructed in 1887 and 1888 during what was known as "the boom." In 1888 the Pacific Beach Railway Company, which was owned by Colonel A. G. Gassen and several other landowners of Pacific Beach, built a line of steam railway from the Washington Square Plaza in Old Town to Ocean Front at Pacific Beach, in connection with the old racetrack at Pacific Beach and to aid in the disposition of the properties of the owners at that point. These two railroads were then consolidated into the San Diego, Old Town and Pacific Beach Railway Company. In 1893 and 1894 the railway was extended from Ocean Front, in Pacific Beach, a distance of some four and one half miles to its present terminus at La Jolla, and the entire property was taken over by a new corporation known as the San Diego, Pacific Beach and La Jolla Railway Company. In 1898 or 1899 the stock in this corporation was bought by Mr. E. S. Babcock. In 1903 or thereabouts, Mr. Babcock also constructed defendant's present street railway in San Diego, which was planned to be the first link in a line of railway to be constructed between San Diego and Los Angeles. In April, 1906, Mr. Babcock incorporated the Los Angeles and San Diego Beach Railway Company, the defendant in this case, and turned over to it both the La Jolla line and his electric line in the business portion of San Diego, in return for stocks and bonds of defendant company, as will hereafter appear in greater detail.

Defendant's total authorized capital stock is 20,000 shares of the par value of $100 each. Of the amount so authorized, 7,110 shares having a par value of $711,000 are now issue and outstanding. Of the shares so issued, 5,460 shares, of which Mr. Babcock received all except 8, which were issued to qualify four other directors, were issued in exchange for the property consolidated into defendant company as follows:

San Diego, Old Town and Pacific Beach Railway	$250,000 00
San Diego, Pacific Beach and La Jolla Railway	131,000 00
Mr. Babcock's electric line in San Diego	165,000 00
	$546,000 00

The amount of stock so issued was far in excess of what these properties had cost Mr. Babcock and considerably in excess of their real value. The remaining 1,650 shares of stock constitute the original subscription of stock by the incorporators of the defendant. The certificates of stock representing these shares were all endorsed "10 per cent paid in." Apparently 90 per cent is still due on the subscriptions. The present ownership of defendant's capital stock is as follows:

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	Issued for property.	Issued for 10 per cent cash.	Total.
E. S. Babcock	5,452 shares	1,646 shares	7,098 shares
Mrs. Isabella Babcock	2 shares	1 share	3 shares
Clara L. Ingle	2 shares	1 share	3 shares
J. L. Stroup	2 shares	1 share	3 shares
R. B. Talbot	2 shares	1 share	3 shares
	5,640 shares	1,650 shares	7,110 shares

Shortly after the time of the defendant's incorporation, bonds of the face value of $546,000 were also issued by defendant to Mr. Babcock in return for the same property covered by the stock, but in June, 1909, these bonds were canceled, together with accrued interest amounting to $81,050. Defendant has outstanding an indebtedness as of June 30, 1911, amounting to $152,946.63, on which it pays interest at the rate of 7 per cent per annum. All moneys expended for construction since 1906, in so far as necessary to be borrowed, have been advanced by Mr. Babcock, who has been credited monthly with 7 per cent interest. His interest credits have amounted during his ownership to about $29,298.24. His cash advances ceased in the fall of 1910, since which time he has withdrawn about $62,270.78, which amount has been partially refunded to the defendant through the sale of various notes in favor of different San Diego banks, totaling $44,000. The cost of defendant's property has been a matter of very considerable confusion and uncertainty. The estimates of various witnesses for complainants and others are as far below the truth as the returns given in certain of defendant's annual reports filed with this Commission are in excess of the real cost. In response to the Commission's request, defendant filed with it after the hearing a carefully prepared and itemized statement showing in considerable detail the actual cost of construction and acquisition of the property now owned and operated by defendant. I believe this report with the exception of item covering replacement of rails, to which reference will hereafter be made, to be substantially correct. A summary of its items is as follows:

1. Cost of construction of property of San Diego, Old Town and Pacific Beach Railway Company from Arctic and D streets, San Diego, to Ocean Front, Pacific Beach, 1887-1903	$126,024 02
2. Cost of construction of property of San Diego, Pacific Beach and La Jolla Railway Company, from Orean Front, Pacific Beach, to La Jolla, 1893-1898	25,046 44
3. Cost of construction of C and Sixth street electric line, built by Mr. Babcock, together with electrified San Diego terminal of San Diego, Old Town and Pacific Beach Railway along Arctic street between D street and Cedar street, 1903-1906	66,318 64
Carried forward	$217,389 10

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Brought forward	$217,389	10
4. Moneys expended by defendant in construction since April, 1906.		
(*a*) Fourth and F street construction, 1908	24,138	34
(*b*) Additional C and Sixth streets construction, 1906 and 1909	10,040	58
(*c*) Construction within San Diego yard limits since 1906	16,539	53
(*d*) Arctic street hill, elevation reduced and approach raised, about 1907	2,281	36
(*e*) Middletown cut-off, about 1906	2,625	00
(*f*) Old Town, near cemetery, new location of curb, about 1908	580	60
(*g*) Old Town, new location through, eliminating sharp curves and crossing of plaza, about 1907 and 1909	4,860	58
(*h*) Raising and widening embankment through low lands, between San Diego River bridge and Morena, about 1907	4,582	49
(*i*) Improvements at Morena and fills for Old Town and Pacific Beach cut-off, about 1907	1,330	52
(*j*) Pacific Beach cut-off across racetrack, about 1907	23,287	64
(*k*) Widening embankment at Pacific Beach, about 1908	475	00
(*l*) Bird Rock, new spur, about 1907	70	34
(*m*) Y, side tracks and engine house at South La Jolla, about 1906, 1907, 1908	5,167	15
(*n*) Loop in La Jolla Park, side tracks and depot property, about 1907 and 1908	14,652	19
(*o*) Various construction charges, 1906, March, 1912	1,427	03
(*p*) General expense, 1906, March, 1912	7,241	05
	$119,299	40
5. Moneys spent for equipment.		
(*a*) October 1, 1888-1903	$39,951	17
(*b*) 1903-1906 (including two electric cars and equipment, $7,330.59)	7,824	49
(*c*) 1906-1912 (including two gasoline motor cars, $37,744.84)	42,295	51
	$90,071	17
Credit two flat cars sold	300	00
	$89,771	17
Flat cars received from E. S. Babcock in 1906	7,941	11
	$97,712	28
6. Material on hand	7,447	63
Total moneys expended in construction and acquisition of property	$441,848	41

It should be remembered that the above figures represent the cost of the property now running over a period of more than twenty years and that nothing has been charged off for depreciation. It should be remembered furthermore that Mr. Babcock did not expend nearly this amount on the property. The property represented by items 1 and 2 in the above statement and equipment valued at $39,951.17, representing an outlay from 1888 of $191,021.63, were bought by Mr. Babcock in 1898 or '99. The property at that time was in a very dilapidated condition. A witness testified positively that Mr. Babcock paid $50,000 for the controlling interest in the property at that time. Mr. Babcock was asked concerning this price and refused to state what he paid. Consequently, for the purposes of this case, the sum of $50,000 will

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stand. In order to ascertain the moneys which Mr. Babcock has expended on the property, there must be added to this amount items 3 and 4, $50,120 of item 5, item 6, and an item of $22,788 for new rails, as will hereinafter appear, making a total of $315,973.27. It should also be remembered in adjusting passenger rates between San Diego and La Jolla and points intervening, that an original outlay of $66,318.64, and a later outlay of $34,178.92 for construction and $7,330.59 for equipment, making a total of $107,828.15, are all chargeable to the electric lines in the business section of San Diego, which have no necessary connection with the La Jolla line, and were built as a first link in a railroad to Los Angeles. From the above total of $315,973.27 should be subtracted that portion of the San Diego city lines which is not justly chargeable to the La Jolla line; also the sum of $152,946.63, which represents part of the above total, and on which defendant is regularly paying interest at 7 per cent per annum; also the depreciation in the property. The result thus secured should then be considered in connection with defendant's net revenue for the year ending June 30, 1912. After considering all the facts in this case, I find that defendant is at present earning at least a reasonable return, though for the years ending June 30, 1909, and June 30, 1910, it was operating at an actual deficit.

The question of defendant's net earnings has also been one of considerable dispute. Attached to this opinion and marked "Exhibit A" is a statement prepared by this Commission's auditor, showing the total earnings, total operating expenses and maintenance, net operating revenue, interest credited at 7 per cent on new capital and balance remaining to pay interest on original investment, all as shown on defendant's books, for each of the six years preceding June 30, 1912. It will be noted that this exhibit shows profits and deficits, after paying operating expenses and maintenance and interest on outstanding indebtedness as follows:

For the year ending June 30, 1907—profit	$7,108 77
For the year ending June 30, 1908—profit	1,579 23
For the year ending June 30, 1909—deficit	7,823 79
For the year ending June 30, 1910—deficit	9,476 32
For the year ending June 30, 1911—profit	98 54
For the year ending June 30, 1912—profit	5,187 82

To the total balances above shown, however, should be added the sum of $22,788. This sum represents the difference between 9 miles of 60-pound rails at $40 per ton and 9 miles of 40-pound rails at $20 per ton. Defendant relaid this distance of 40-pound rails with 60-pound rails and charged the entire cost of the 60-pound rails to repairs, thus increasing the item of maintenance and decreasing the net profits, instead of crediting the difference to betterments, as should have been done.

Complaints and numerous citizens of La Jolla and Pacific Beach

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have complained earnestly that defendant's passenger rates are too high and that this fact has retarded the development of the territory adjacent to defendant's line of railway. They complain also of discriminations in rates as between different localities on the line, particularly as against Pacific Beach. I find these complaints to be in part well founded. However, even if the Commission were convinced that it would be a good thing for a community to reduce passenger rates into that community, the Commission would have no right, either legal or moral, to do so if such action would in effect take away the railway's property. If I believed that the reduction in defendant's passenger rates herein ordered would reduce defendant's revenues, I should hesitate, in view of defendant's present financial condition, to recommend such reduction. In the present case, however, bearing in mind among other things the remarkable prosperity which the city of San Diego is enjoying, her marked expansion in every available direction except along the line of defendant's line of railway and the attractiveness of considerable portions of the territory along said line for home builders if they can secure reasonable passenger rates, I am convinced that a reasonable reduction in such rates will give a marked impetus to the building up of the country and will increase instead of decreasing defendant's revenues and net profits. My conviction in this matter is strengthened by the results of a slight reduction in rates, mostly commutation rates, which defendant established on this Commission's recommendation, effective January 15, 1912. Since said date, defendant's revenues, instead of decreasing, have materially increased. In reaching a conclusion in this mater, it should also be borne in mind that defendant must be permitted to earn a liberal profit, so that either defendant or other capitalists will be encouraged to electrify the railroad—an action which will redound very largely to the benefit of all the people living along its line.

In considering the question of defendant's passenger fares, I wish to present the following additional considerations: Defendant is supported to a large extent by the tourist travel which appears to be confined almost exclusively to movements between San Diego and La Jolla. Of a total of 17,893 tickets sold between all points on defendant's line during the months of June and July, 1911, 15,885 tickets, or approximately 88 per cent, were round trip tickets sold between San Diego and La Jolla. The great majority of persons purchasing these round trip tickets were tourists. Defendant sells various forms of commutation tickets good for ten to thirty rides—both individual and family tickets—which enable the purchaser to travel at a much less rate than the ordinary single or round trip rates, and persons having their homes along defendant's line of railway generally buy some form of such commuta-

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tion tickets instead of the regular single or round trip tickets. For instance, family commutation tickets good for sixty days and containing 20-ride tickets may be purchased to Pacific Beach for $3.30, or 16½ cents per single trip, and to La Jolla for $4.00, or 20 cents per single trip. Thirty-ride family commutation tickets good for sixty days may be purchased to Pacific Beach for $3.75, or 12½ cents per single trip, and to La Jolla for $6.00, or 17½ cents per single trip. Individual commutation tickets good for ten rides, to be used within thirty days, may be purchased to Pacific Beach for $1.65, or 16½ cents per single trip, and to La Jolla for $2.00, or 20 cents per single trip, and fifteen-ride individual tickets limited to fifteen days may be purchased for $1.90 to Pacific Beach, or 12⅔ cents per single trip, and $2.25 to La Jolla, or 15 cents per single trip.

A comparison of these commutation rates with the present one-way round-trip fares and a consideration of the fact that parties can purchase these family or individual commutation tickets good for periods which would permit a person or family doing any traveling worthy of consideration to obtain rates much less than the current single and round-trip rates, leads me to believe that the residents along this line are not suffering from excessive single and round-trip rates, except in so far as the rates which I shall hereinafter specify as reasonable are reductions from the present fares.

I may also say that in my opinion defendant, in selling the numerous forms of commutation tickets, has pursued a policy much more liberal than railroads generally throughout the country. In fact, it is almost a uniform practice for carriers to have on sale only two forms of commutation tickets for adults, namely, an individual monthly ticket good for the month and a family commutation ticket containing thirty rides. I find, however, that the rates now charged for individual monthly commutation tickets good for one round-trip daily during the month are excessive, and cannot be expected to be attractive to homeseekers, and accordingly recommend material reductions in the rates for such individual monthly commutation tickets.

While I have made certain adjustments on single and round trip tickets between San Diego and points, Hardy to Bird Rock, inclusive, which I believe eliminate the present inconsistencies, I cannot agree with complainant's contention that in order to arrive at a rate from San Diego to La Jolla, the full local should be added over the rate—San Diego to Pacific Beach. It is an axiom of railroading, and I think too thoroughly established to admit of dispute, that as distance increases the cost of hauling freight per ton per mile or for carrying passengers per mile decreases. In other words, the cost of transporting a passenger fourteen miles is more than the cost of transporting him ten

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miles, but not to the extent of what would ordinarily be charged for transporting him locally the difference in distances.

In addition to the rates herein specifically named as reasonable rates, the defendant will be required to adjust all its one-way passenger fares between points other than those mentioned to the basis of three cents per mile, with a minimum charge of five cents.

After careful consideration of this question in its various aspects, I find that the defendant's present passenger fares are unjust and unreasonable and discriminatory in so far as they vary from the fares hereinafter prescribed and that the following passenger fares are just and reasonable and non-discriminatory, and should be established, viz:

Between SAN DIEGO and	Single trip.	Round-trip.	Monthly individual commutation—one round trip daily.
Hardy	10	20	$4 00
Morena	15	25	4 25
Mission Bay	20	30	4 50
Pacific Beach—			
Lamont street	20	30	5 00
Haines street	20	30	5 00
Ocean Front	25	35	5 25
Seaside	25	35	5 25
Glendol	30	40	5 50
Bird Rock	35	45	5 75
La Jolla Strand	40	50	6 00
South La Jolla	40	50	6 00
La Jolla	40	50	6 00

Defendant should be directed to file and publish said fares, effective twenty days from the date of the service of the order in this case. If after one years' trial it appears that the effect of the order in this case has been to reduce defendant's revenues, defendant may then, if it so desires, apply to this Commission for relief.

I find that there is no satisfactory evidence to sustain the complaint as to defendant's freight rates and recommend that the complaint be dismissed in so far as it attacks such rates.

Complainants also attack defendant's service and in particular ask for certain changes in the time schedule of existing motor cars and steam trains and for the putting on of specified additional cars and trains. After the hearing in this case, defendant put into effect its time table No. 15, which grants most of the material changes requested by defendant's patrons. The 11 p. m. motor car which used to leave San Diego two nights in the week only now runs every night except Sunday and an additional motor car leaves San Diego Saturdays and Sundays at 9.15 p. m. Additional motor cars also leave San Diego

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during the day time and similar changes have been made from the La Jolla end of the line. These changes have made it necessary to employ steadily an extra crew which was formerly used only for extra and special trains. In my judgment these changes should meet the present reasonable demands of the traveling public in so far as affects time schedules, and I shall make no recommendation on this branch of the case except that before defendant changes said schedule it shall first have secured this Commission's permission.

Considerable complaint was made concerning defendant's equipment, particularly its rolling stock. The steam motors and passenger cars have been used by defendant and its predecessor since 1888, and compare very unfavorably with the rolling stock of the more progressive steam and electric railroads of the State. The same comment, except as to the length of service, applies to the two electric cars used on defendant's electric line within the business portion of San Diego. Defendant, in an effort to improve conditions, has within the last few years put on two gasoline motor cars, but they are unreliable and frequently out of repair so that passengers often do not arrive at their destination on schedule time. These cars are also frequently crowded to the limit, and they seem particularly uncomfortable to persons accustomed to travel on easily moving, commodious electric cars. While I find that defendant's rolling stock is out of date and inadequate to meet the traveling conditions of to-day, I shall not recommend the acquisition of new or additional steam or gasoline equipment for the reason that in my judgment the money so spent would be largely wasted in view of the very evident need for electrifying the railroad. I think it far wiser to save this money and to use it later to buy electric equipment. In continuing to endure for a while longer the present conditions, the public will have to bear in mind that some forbearance and patience is necessary on their part in order to accomplish the ultimate ends for which both the public and the railway should strive. If after a year from date no satisfactory improvement in motive power and rolling stock has taken place, application for relief in these respects may again be made to this Commission.

Several persons owning property in the vicinity of Seaside station have complained because no motor cars and only certain steam trains stop at that station, and they ask that defendant be required to stop all its cars and trains at said station, on signal, and that defendant be required to print the names of all stations, including Seaside, on its time tables and conductors' tickets, and that if defendant's equipment does not permit the stoppage of all cars and trains at Seaside, defendant be required to provide equipment which will permit of such stoppage. I find that Seaside station is situated on a long grade of 1.94 per cent, ascending from the south, and that it would be difficult and imprac-

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ticable for motor cars coming from the south to start again after stopping at said station. There is no good reason, however, why motor cars coming from the north should not stop at this station. Steam trains of more than three cars going north, will likewise have difficulty in starting again after stopping at this station. These are likewise difficulties which would be considerably alleviated if the railway were electrified. Defendant should be directed to stop at Seaside for passengers having tickets to that station, and on flag all its motor cars coming south, and all its steam trains in either direction, except such trains going north as consist of more than three cars, and to print on all its time tables and conductors' tickets sold by agents or conductors the names of all stations, including Seaside.

This disposes of all the material questions involved in this controversy. In closing this opinion, I wish to emphasize the point that defendant can not make good unless it has passengers and the public living along its line can not secure that prosperous development to which they believe they are entitled unless they have good service in the way of transportation at reasonable rates. I cannot too strongly express the hope that both defendant and its patrons will now forget their past differences and work together for the benefit of both.

I submit herewith the following form of order:

ORDER.

A public hearing having been held in the case entitled as above, and evidence having been presented by the parties, and the Railroad Commsision having made an independent investigation into the books and accounts of defendant, and due consideration having been given to all the evidence in the case,

It is hereby ordered as follows:

1. The Commission finds as a fact, that defendant's present passenger fares are unjust and unreasonable and discriminatory, in so far as they vary from the fares hereinafter prescribed, and finds as a fact that the following passenger fares are just and reasonable and nondiscriminatory:

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Between SAN DIEGO and	Single trip.	Round-trip.	Monthly individual commutation — one round-trip daily.
Hardy	10	20	$4 00
Morena	15	25	4 25
Mission Bay	20	30	4 50
Pacific Beach—			
Lamont street	20	30	5 00
Haines street	20	30	5 00
Ocean Front	25	35	5 25
Seaside	25	35	5 25
Glendol	30	40	5 50
Bird Rock	35	45	5 75
Lo Jolla Strand	40	50	6 00
South La Jolla	40	50	6 00
La Jolla	40	50	6 00

In addition to the foregoing rates defendant is also directed to adjust all its one-way passenger fares between any two stations on its line of railway, except as above indicated, to the basis of 3 cents per mile, with a minimum charge of 5 cents. Defendant is hereby directed to file and publish the fares in this order specified, effective twenty days from the service of this order.

2. Defendant shall maintain its present time schedules until it shall first have secured the consent of the Railroad Commission to any proposed change therein.

3. Defendant is directed to stop at Seaside for passengers having tickets to that station, and on flag all its motor cars coming south, and all its steam trains in either direction, except such trains going north as consist of more than three cars, and to print on all its time tables and tickets sold by agents or conductors the names of all stations, including Seaside.

4. The complaint in this case in so far as it prays for the foregoing relief is hereby sustained and in other respects it is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

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EXHIBIT "A."

Los Angeles and San Diego Beach Railway—Statement of Earnings and Expenses for Six Years Ending June 30, 1912.

	For year ending June 30, 1907.	For year ending June 30, 1908.	For year ending June 30, 1909.	For year ending June 30, 1910.	For year ending June 30, 1911.	For year ending June 30, 1912.	Totals.
Passenger earnings	$37,754 53	$45,104 78	$41,113 54	$44,861 15	$53,036 63	$63,036 32	$284,906 95
Freight and miscellaneous earnings	10,999 96	13,922 66	13,071 30	9,981 10	10,268 02	13,948 19	72,191 23
Total earnings	$48,754 49	$59,027 44	$54,184 84	$54,842 25	$63,304 65	$76,984 51	$357,098 18
Operating expenses	$23,514 73	$28,137 25	$37,253 35	$37,296 47	$34,800 89	$42,980 46	$203,983 15
Maintenance	17,572 46	27,007 14	18,771 28	18,675 88	18,208 16	18,952 08	119,187 00
Total expenses	$41,087 19	$55,144 39	$56,024 63	$55,972 35	$53,009 05	$61,932 54	$323,170 15
Net operating revenue	$7,667 30	$3,883 05	$1,839 79	$1,130 10	$10,295 60	$15,051 97	$33,928 03
Less interest credited at 7 per cent	558 53	2,303 82	5,984 00	8,346 22	10,197 06	9,864 15	37,253 78
Balance	$7,108 77	$1,579 23	$7,823 79	$9,476 32	$98 54	$5,187 82	$3,325 75

NOTE.—To the balances above shown should be added the sum of $22,788 improperly charged on defendant's books to repairs instead of to betterments, making a net balance for the period of $19,462 25.

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DECISION No. 192.

IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY TO FILE A CHANGE OF RATES IN THE PLACE AND STEAD OF ITEM NUMBER EIGHT OF SCHEDULE OF RATES FILED WITH SAID COMMISSION BY THE WESTERN UNION TELEGRAPH COMPANY ON APRIL 18, 1912.

Application No. 137.

Decided August 21, 1912.

Held, That the proposed change will simplify the work of the telegraph company and of the press associations who avail themselves of the particular rate in question and will remove ambiguities which are apparent in the present form.

A. H. May, District Commercial Superintendent, for Western Union Telegraph Company.

E. B. Harrington, for Western Union Telegraph Company.

REPORT OF THE COMMISSION.

EDGERTON and GORDON, *Commissioners.*

This application involves a proposed schedule of rates for the transmission of press messages over the lines of the Western Union Telegraph Company within the State of California. Item No. 8 of the schedule of rates filed by the Western Union Telegraph Company reads as follows:

"THE WESTERN UNION TELEGRAPH COMPANY.

Rates Charged to Regularly Incorporated Press Associations for Various Classes of Service.

"*First Class:* All matter intended for publication which is filed for transmission between 6 a. m. and 6 p. m., local time, having but one address and directed by any one agent or correspondent of the association to any other one agent of the association, two thirds of the additional word rate on day commercial messages between such points.

"*Second Class:* All matter intended for publication and filed for transmission between 6 p. m. and 6 a. m., local time, addressed as above, one third of the additional word rate on day commercial messages.

"*Third Class* (Circuit Rates): All matter outward from any distributing agency of the association intended for publication: for the first 300 miles or less on a circuit, ½ cent per word between 6 a. m. and 6 p. m., and ¼ cent per word between 6 p. m. and 6 a. m., and for each drop on the circuit ⅛ cent per word and for any distance over 300 miles, 1-16 cent per word for each additional 100 miles or fraction thereof, for the transmission, and ⅛ cent per word for each drop, the association to pay for a minimum of four drops in addition to the terminal, whether sent or not. Day service to average not less than 500 words per day, Sundays excepted. Night service to average not less than 1000 words per night, Saturdays or Sundays excepted.

"*Fourth Class:* Messages relating to the business or service of the association with but one address and not intended for publication, one half the additional word rate on day commercial messages between such points."

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The applicant proposes in lieu of the above-mentioned item to publish the following:

"THE WESTERN UNION TELEGRAPH COMPANY.

Rates for Press Association Combination Reports.

"Press Association combination reports consist of news dispatches of identical text, addressed to four or more newspapers, filed at one place for transmission at specified hours, not less than six days or six night per week, minimum number of words five hundred per day or night.

Day Rates for 500 Words or Less per Day.

"To each address one hundred miles or less from the filing point, one dollar; and for each additional hundred miles or less of distance, thirty cents additional.

Night Rate for 500 Words or Less per Night.

"To each address one hundred miles or less from the filing point, one dollar; and for each additional one hundred miles or less of distance, fifteen cents additional.

Additional Words.

"For each additional one hundred words or less above 500, day or night, one fifth of the day or night charge for 500 words to be added."

From the evidence submitted subsequent to hearing, it appears that, based on the traffic for the month of July, 1912, the proposed rule would bring about a reduction in rates amounting to $82. Had the applicant been in a position to state definitely at the time of filing these proposed changes that the effect would have been a reduction in rates, the item could have become effective on thirty days' notice, or less, on application and there would have been no necessity for a formal hearing.

The Commission is in receipt of communications from the National News Association, The Associated Press and the United Press Association endorsing the proposed item, and it has been represented to the Commission that these are the only associations interested in any manner whatsoever in this item.

It is apparent from a consideration of the two items that the proposed changes will greatly simplify the accounting work of the telegraph company as well as the press associations who avail themselves of these rates. A glance at the existing provisions of Item 8 reveals a system of rate making which is ambiguous and complicated. In arriving at a basis for the proposed item the applicant has reduced the rates based on its present schedule of so much per word to a rate of $1.00 for each 500 words, or less, per day and for each additional 100 miles, or less, of distance, 30 cents additional.

Night rates for 500 words, or less, per night for distances of 100 miles, or less, $1.00, and for each additional 100 miles, or less, 15 cents additional. For each additional 100 words, or less, above 500, day or night, one fifth of the day or night charge for 500 words is added.

It is apparent to us that the proposed item simplifies the work of the press associations and the telegraph company and removes ambiguities which are apparent in the present item. We, therefore, recommend that the application be granted and the following order is submitted:

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ORDER.

Application No. 137 of the Western Union Telegraph Company requests permission to cancel Item No. 8 of schedule of rates filed with the Commission by said Western Union Telegraph Company, and in lieu thereof to publish the following:

"THE WESTERN UNION TELEGRAPH COMPANY.

Rates for Press Association Combination Reports.

"Press Association combination reports consist of news dispatches of identical text, addressed to four or more newspapers, filed at one place for transmission at specified hours, not less than six days or six nights per week, minimum number of words five hundred per day or night.

Day Rates for 500 Words or Less per Day.

"To each address one hundred miles or less from the filing point, one dollar; and for each additional one hundred miles or less of distance, thirty cents additional.

Night Rate for 500 Words or Less per Night.

"To each address one hundred miles or less from the filing point, one dollar; and for each additional one hundred miles or less of distance, fifteen cents additional.

Additional Words.

"For each additional one hundred words or less above 500, day or night, one fifth of the day or night charge for 500 words to be added."

It appearing that this proposed item brings about a reduction in rates and that this item removes ambiguities and provides a more simple method of accounting, the application is granted, effective September 1, 1912.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 24th day of August, 1912.

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DECISION No. 193.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER FOR AN ORDER AUTHORIZING AND PERMITTING THE INCREASE IN THE RENTALS, TOLLS AND CHARGES FOR WATER FURNISHED BY THEM AND SERVICE RENDERED BY THEM IN FURNISHING WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Application No. 118.

Decided August 26, 1912.

Special order fixing rates for pumping water pending Commission's determination as to matters presented by an application to increase rates for gravity water.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

It is apparent that it will be necessary to require water to be pumped from the La Mesa reservoir to the Eucalyptus reservoir for the purpose of serving consumers which may be served from this second reservoir. The Cuyamaca Water Company is directed immediately, at its own expense, to install adequate pumping facilities at the La Mesa reservoir and begin the pumping of water from said reservoir to the Eucalyptus reservoir.

For the purpose of this order, the consumers of this company will be divided into three classes: All consumers taking from the flume of this company and too high to be served from the Eucalyptus reservoir, class number 1; the consumers that may be served from the Eucalyptus reservoir, but too high to be served from the La Mesa reservoir by gravity, class number 2; all consumers that may be served by gravity from the La Mesa reservoir, class number 3.

From and after the sixth day of September, 1912, the Cuyamaca Water Company shall serve no consumers of classes 2 and 3, except from water pumped from the La Mesa reservoir, except the necessary run-off from the flume into the Eucalyptus reservoir.

The following rates for pumping are established, to be applicable ten days from date, or at such previous date as the company may begin pumping from the La Mesa reservoir:

Class number 1, first 50 per cent of supply to which consumers are entitled, two cents per thousand gallons. For all quantities furnished over 50 per cent and less than 75 per cent, three cents per thousand gallons. For all quantities furnished over 75 per cent, ten cents per thousand gallons.

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Class number 2: For all quantities up to 50 per cent, two and a half cents per thousand gallons. For all quantities over 50 per cent and up to 75 per cent, four cents per thousand gallons. For all quantities over 75 per cent, ten cents per thousand gallons. In no instance shall the company furnish to any consumer a supply greater than that to which he is entitled under the present status of the rates.

The company will pump from the La Mesa reservoir and shall only preserve therein a quantity sufficient to furnish the needs of the consumers in class number 3 in like proportion as the needs of the consumers of the other two classes may be served. The company will immediately notify the consumers in class number 3 of this order, and that they must conserve the water.

If the company, or any consumer, calls to the Commission's attention the fact that any consumer of class number 3 is using water in an extravagant and wasteful manner, upon such fact being established, this Commission will require meter service to such consumer and will fix a rate applicable thereto.

All rates established herein are to be in addition to the rates now charged and are to remain in force for ninety days after the sixth of September, 1912, unless the Commission shall make a further order in reference thereto. If, at the expiration of said ninety days, this pumping is still necessary, this Commission shall make a further order extending the time during which these rates may be collected.

In this order I have attempted to bring about two results: First, to give the company an adequate sum for this additional service; and, second, to prevent waste of water. The rates fixed for quantities over 75 per cent I have made purposely excessive, because it is perfectly apparent that any one who uses even 75 per cent under this system for a considerable time to come will be taking more than the proportion which the supply now in the system will warrant.

The Commission does not express any opinion as to what its final determination will be in any of these questions, and does not commit itself to a future fixing of rates for pumping in addition to other rates.

This is an emergency measure and shall not be considered as a precedent for guidance of the Commission under ordinary circumstances.

While I leave it to the discretion of the company the character of the pumping facilities which it will install, yet I recommend that this be of as temporary a character as will adequately perform the service required. We do not expect a repetition of this condition in this system another year.

The above order is approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated August 26th, 1912.

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DECISION NO. 194.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE CALIFORNIA, ARIZONA AND SANTA FE RAILWAY COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, FOR APPROVAL OF A CERTAIN CONTRACT RELATING TO THE JOINT USE OF A LINE OF RAILROAD BETWEEN MOJAVE, IN KERN COUNTY, CALIFORNIA, AND BAKERSFIELD, IN THE SAME COUNTY, AND FOR AN ORDER AUTHORIZING THE USE AND OPERATION OF SAID LINE OF RAILROAD IN ACCORDANCE WITH SUCH CONTRACT.

Application No. 173.

Decided August 27, 1912.

***Held*, That joint operation and joint participation in upkeep, for which permission is herein asked, and other expenses, will be of distinct advantage to applicants and without injury to any one.**

H. C. Booth and *Geo. D. Squires*, for the Southern Pacific Company and the Southern Pacific Railroad Company.

E. W. Camp and *E. S. Pillsbury*, for the California, Arizona and Santa Fe Railway Company and Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LOVELAND and THELEN, *Commissioners.*

For years prior to the filing of this application and the hearing thereon, the several applicants had operated the line of railroad designated in the application as the "line of railroad between Mojave, in Kern County, and Bakersfield, in the same county," under an agreement entered into by applicants providing for joint use, maintenance, repairs, etc., of said line of railroad.

This agreement would have expired by limitation in 1917 and applicants' claim to the effect that it should be canceled at this time and a new agreement entered into is based upon the fact that the change recently made in the laws of California as to taxing of corporations makes operation under the old agreement difficult, and presents the necessity for the new agreement asked for. In addition to making such changes as are necessary owing to the changes made in the manner of taxing corporations, the new contract makes provisions for the possible double tracking of the line of railroad between Mojave and Bakers-

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field and for an increase in the rental paid by lessees in an amount which all parties to the agreement have declared reasonable and proper. This amount is to be 2½ per cent on the cost of double-tracking the road. Under the old agreement, the rental was fixed at eighty thousand (80,000) dollars per annum. Under the new agreement it is increased to eighty-four thousand (84,000) dollars.

The representatives of the applicants were closely questioned but nothing was developed to disclose or indicate anything unfair to any of the parties to the agreement or injurious to the interests of the public. We believe that such joint operation and joint participation in upkeep, and other expenses will be of distinct advantage to applicants and without injury to any one. While in many cases of this kind the Commission will desire to investigate the value of the property leased, to ascertain the reasonableness of the rental price, we do not deem such investigation necessary in this case. We recommend that the prayer of applicants be granted; that the agreement or contract as to the joint operation of this line of road in question be approved and that an order be issued authorizing such joint operation, and we submit herewith a form of order:

ORDER.

The Southern Pacific Railroad Company, Southern Pacific Company, the California, Arizona and Santa Fe Railway Company and the Atchison, Topeka and Santa Fe Railway Company having filed with this Commission their application for the approval of an agreement dated January 1, 1912, between said companies relating to the joint use of a line of railroad between Mojave, in Kern County, California, and Bakersfield, in the same county, and for an order authorizing the use and operation of said line of railroad, in accordance with such contract, and a public hearing having been held on said application, and it appearing to the Commission that public convenience and necessity will be served by the grant of the application,

It is hereby ordered that said application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of August, 1912.

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DECISION No. 195.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND THE CALIFORNIA, ARIZONA AND SANTA FE RILWAY COMPANY FOR THE APPROVAL OF A CERTAIN CONTRACT IN REGARD TO THE ASSIGNMENT OF RIGHTS AND ASSUMPTION OF OBLIGATIONS ACCRUING AND ARISING UNDER AN AGREEMENT BETWEEN THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY, THE CALIFORNIA, ARIZONA AND SANTA FE RAILWAY COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Application No. 174.

Decided August 27, 1912.

E. W. Camp and *E. S. Pillsbury,* for applicants.

REPORT OF THE COMMISSION.

LOVELAND and THELEN, *Commissioners.*

This application sets forth that The California, Arizona and Santa Fe Railway Company is a holding company for the Atchison, Topeka and Santa Fe Railway Company; that it is a party to an agreement with the Southern Pacific Company and others, which agreement provides for the joint use, operation, maintenance, etc., of a certain line of railroad extending between Mojave, Kern County, and Bakersfield, in the same county; that it is not an operating company and is not prepared to operate or make use of said line of railroad and that it desires, therefore, to assign to the Atchison, Topeka and Santa Fe Railway Company all the rights which it acquired under said agreement with the Southern Pacific Company and others.

In explanation of why this agreement was necessary, applicant, through its attorney, stated to the Commission that the California, Arizona and Santa Fe Railway Company was organized as a holding company to hold the stock of the various local companies subsidiary to the Atchison, Topeka and Santa Fe Railway Company and that this was done in order to facilitate such financial transactions as it was desired to make involving the subsidiary lines, and that to combine the ownership of the stock of smaller lines in one company made it much easier to float bonds and generally finance its operations.

We see no objection to this arrangement and recommend that the

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agreement between the California, Arizona and Santa Fe Railway Company and the Atchison, Topeka and Santa Fe Railway Company, as to the assignment of the rights acquired under said agreement with the Southern Pacific Company and others by the California, Arizona and Santa Fe Railway Company to the Atchison, Topeka and Santa Fe Railway Company be approved, and present herewith the following form of order:

ORDER.

The Atchison, Topeka and Santa Fe Railway Company and the California, Arizona and Santa Fe Railway Company having filed with this Commission their application for the approval of agreement dated January 1, 1912, between said companies in regard to the assignment of rights and the assumption of obligations accruing and arising under an agreement of the same date between said companies and Southern Pacific Railroad Company and Southern Pacific Company, which agreement is the subject-matter of this Commission's order on Application No. 173, and a public hearing having been held, and it appearing to the Commission that public convenience and necessity will be served by the grant of said application,

It is hereby ordered that said application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of August, 1912.

DECISION No. 196.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS HALLADAY AVENUE NEAR DELHI, ORANGE COUNTY, CALIFORNIA.

Application No. 190.

Decided August 27, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on August 17, 1912, filed with the Commission its application for permission to construct

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a spur track at grade across Halladay avenue, a public highway, between Dyer and Delhi, Orange County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct a spur track at grade across a public highway known as Halladay avenue between its stations Dyer and Delhi, Orange County, California, as shown by the maps attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with the cost of its maintenance hereafter in good and first class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) The crossing shall be provided with the necessary plank or guard rails and constructed of sufficient width and be ballasted with gravel, stone or other suitable ballast and made in every way safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 27th day of August, 1912.

DECISION NO. 197.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER PERMITTING THE EXECUTION OF A NEW TRUST DEED OR MORTGAGE AND MODIFYING CERTAIN PROVISIONS OF DECISION ON APPLICATIONS NOS. 1, 14, AND 15.

Application No. 191.

Decided August 27, 1912.

Applicant gas company asks that it be authorized to execute a trust deed providing for twenty-year bonds in place of forty-year bonds secured by an existing mortgage. The applicant held to be in line with the more economical and successful management of applicant's business.

Lester G. Burnett, for applicant.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The Central California Gas Company applies for permission to execute a new deed of trust or mortgage substantially in the form of Exhibit "A." attached to the petition, running to Los Angeles Trust and Savings Bank, and also to modify section 5 of the order made by this Commission in applications Nos. 1, 14 and 15 of Central California Gas Company.

Under the Commission's order on applications Nos. 1, 14 and 15, applicant was authorized to execute a trust deed or mortgage to Los Angeles Trust and Savings Bank to secure a maximum authorization of $300,000 forty-year gold bonds. This trust deed or mortgage has been executed and bonds of the par value of $31,500 have been issued thereunder in connection with the purchase by applicant of the Home Gas Company of Porterville. Applicant has found difficulty in disposing of forty-year bonds, and now asks that it be authorized to execute a trust deed or mortgage providing for twenty-year six per cent sinking fund bonds, and also increasing the possible maximum issue from 300,000 to $500,000. Applicant does not now ask for authority to issue any bonds under such deed of trust or mortgage except $31,000 face value which are to be exchanged for the bonds of the face value of $31,500 which have heretofore been issued under the existing deed of trust or mortgage. The remaining $56,500 of bonds authorized by this Commission to be issued under said applications Nos. 1, 14 and 15 have not been issued. Applicant states that forty-year bonds are not readily salable because the property mortgaged does not have a life of forty years, and also that bond buyers object that gas may not be in general demand forty years from now, so that the property of the company then existing may have but little value. The deed of trust or mortgage which it now proposes to execute contains sinking fund provisions.

The application seems to be in line with the more economical and successful management of applicant's business, and I recommend that the same be granted, and submit herewith the following form of order:

ORDER.

Central California Gas Company having applied to this Commission for an order authorizing it to execute and issue to Los Angeles Trust and Savings Bank as trustee its deed of trust or mortgage to secure a possible maximum issue of bonds of the face value of $500,000, and a hearing having been duly held upon said application, and it appearing to the Commission that public convenience and necessity will be subserved by the granting of said application,

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It is hereby ordered that Central California Gas Company be and the same is hereby authorized to issue and execute unto Los Angeles Trust and Savings Bank, as trustee, its trust deed or mortgage to be dated as of the first day of July, 1912, to secure an issue of $500,000 of bonds of said Central California Gas Company, said bonds to be dated as of the first day of July, 1912, and to be payable on the first day of July, 1932, said bonds to bear interest at the rate of six per cent per annum, payable semiannually on the first day of January, 1913, and on the first day of July and January of each year thereafter substantially upon the terms and conditions set forth in copy of said trust deed or mortgage which is annexed to the application, upon the following conditions, and not otherwise:

1. Contemporaneous with the execution and recordation of said new trust deed or mortgage applicant shall cancel of record its existing trust deed or mortgage also running to Los Angeles Trust and Savings Bank to the end that there shall be only one trust deed or mortgage outstanding against applicant's property.

2. Applicant is hereby authorized to execute and deliver bonds of the par value of $31,000 in lieu of its outstanding bonds in the amount of $31,500, issued under its present outstanding trust deed or mortgage.

3. Central California Gas Company shall have no right or authority to issue any bonds pursuant to the terms of said new trust deed or mortgage, other than said $31,000 hereby authorized, except as may hereafter be authorized by this Commission. Except as herein otherwise authorized, the Commission's order on this application authorizes only the execution of a trust deed or mortgage as herein specified, and not an issue of bonds thereunder.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of August, 1912.

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DECISION No. 198.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING RELOCATION OF A SIDETRACK ACROSS A COUNTY ROAD IN THE TOWN OF DURHAM, BUTTE COUNTY, CALIFORNIA.

Application No. 194.

Decided August 27, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on the twentieth day of August, 1912, filed with the Commission its application for permission to relocate a sidetrack across a county road in the town of Durham, Butte County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary; that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and it further appearing that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to relocate its sidetrack at grade across the county road in the town of Durham, Butte County, California, as shown by the map attached to the application; said sidetrack to be moved westerly from the position which it now occupies across said county road a distance of about fifteen (15) feet; same to be constructed subject to the following conditions, viz:

(1) The entire expense of relocating said sidetrack and the maintenance of the crossing hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) The crossing shall be ballasted with first-class gravel or stone ballast and provided with the necessary plank or guardrails and otherwise constructed of sufficient gradient and length to accommodate the safe passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 27th day of August, 1912.

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DECISION No. 199.

IN THE MATTER OF THE APPLICATION OF FERNLEY AND LASSEN RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION AT GRADE OF ELEVEN CROSSINGS OVER PUBLIC HIGHWAYS, LASSEN COUNTY, CALIFORNIA.

Application No. 195.

Decided August 27, 1912.

REPORT OF THE COMMISSION.

Fernley and Lassen Railway Company, a corporation, having on August 20, 1912, filed with the Commission its application for permission to construct its main line track at grade across certain public highways in Lassen County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Fernley and Lassen Railway Company to construct its main line track at grade over and across public highways in Lassen County, California, as follows:

Crossing No. 1. Engineer's station "L" 4172+50 in section 9, township 28 north, range 16 east, M.D.M.
Crossing No. 2. Engineer's station "L" 4440+45 in section 26, township 29 north, range 15 east, M.D.M.
Crossing No. 3. Engineer's station "L" 4547+50, in section 21, township 29 north, range 15 east, M.D.M.
Crossing No. 4. Engineer's station "L" 4657+75, in section 18, township 29 north, range 15 east, M.D.M.
Crossing No. 5. Engineer's station "L" 4876+50, in section 9, township 29 north, range 14 east, M.D.M.
Crossing No. 6. Engineer's station "L" 4894+, in section 9, township 29 north, range 14 east, M.D.M.
Crossing No. 7. Engineer's station "L" 5040+, in section 12, township 29 north, range 13 east, M.D.M.
Crossing No. 8. Engineer's station "L" 5233+40, in section 9, township 29 north, range 13 east, M.D.M.
Crossing No. 9. Engineer's station "L" 5390+, in section 1, township 29 north, range 12 east, M.D.M.
Crossing No. 10. Engineer's station "L" 5475+, in section 3, township 29 north, range 12 east, M.D.M.
Crossing No. 11. Engineer's station "L" 5620+88, in section 32, township 30 north, range 12 east, M.D.M.

All of the crossings above mentioned to be located as shown by the map and profile attached to the application and constructed subject to the following conditions, viz:

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(1) The entire expense of constructing said crossings and the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Fernley and Lassen Railway Company.

(2) The crossings shall be provided with the necessary crossing plank or guardrails and shall be ballasted with not less than six (6) inches of first-class gravel, stone or other suitable ballast material.

(3) The grades of approach for said crossings shall not exceed eight (8) per cent, and the effective width of the crossings for use of vehicles shall not be less than eighteen (18) feet.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 27th day of August, 1912.

DECISION NO. 200.

IN THE MATTER OF THE APPLICATION OF COLUSA AND HAMILTON RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS MAIN LINE AT GRADE ACROSS FORTY-SEVEN PUBLIC HIGHWAYS IN GLENN AND COLUSA COUNTIES, CALIFORNIA.

Application No. 196.

Decided August 27, 1912.

REPORT OF THE COMMISSION.

Colusa and Hamilton Railroad Company, a corporation, having on August 20, 1912, filed with the Commission its application for permission to construct its main line track at grade across certain public highways in Glenn and Colusa counties, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing, and that the said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Colusa and Hamilton Railroad Company to construct its main line track at grade

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across the following public highways in Glenn and Colusa counties, California, viz:

GLENN COUNTY, CALIFORNIA.

Crossing No. 1. "H" 4157+96 to "H" 4158+97, First street, Hamilton;
Crossing No. 2. "H" 4056+49 to "H" 4057+06, County road to Chico;
Crossing No. 3. "F" 3746+90 to "F" 3748+05, County road;
Crossing No. 4. "F" 3730+93 to "F" 3731+64, Public road;
Crossing No. 5. "F" 3699+93 to "F" 3700+55, Public road;
Crossing No. 6. "E" 3576+55 to "E" 3577+19, Jacinto road;
Crossing No. 7. "F" 3487+62 to "B" 3488+25, Public road;
Crossing No. 8. "A" 3355+16 to "A" 3355+76, Willows-Glenn road;
Crossing No. 9. "A" 3271+87 to "A" 3272+37, Public road;
Crossing No. 10. "A" 3119+80 to "A" 3120+20, Willows and Butte City road;
Crossing No. 11. "A" 3093+48 to "A" 3094+08, Public road;
Crossing No. 12. "A" 3067+08 to "A" 3067+68, Public road;
Crossing No. 13. "A" 3040+65 to "A" 3041+25, Public road;
Crossing No. 14. "A" 3013+87 to "A" 3014+47, Public road;

COLUSA COUNTY, CALIFORNIA.

Crossing No. 15. "A" 2933+61 to "A" 2934+21, Norman-Princeton road;
Crossing No. 16. "A" 2907+19 to "A" 2907+79, County road;
Crossing No. 17. "A" 2880+79 to "A" 2881+39, County road;
Crossing No. 18. "A" 2854+40 to "A" 2855+00, County road;
Crossing No. 19. "B" 2827+79 to "B" 2828+54, County road;
Crossing No. 20. "A" 2599+21 to "A" 2559+81, County road;
Crossing No. 21. "A" 2391+61 to "A" 2392+21, Public road;
Crossing No. 22. "A" 2281+58 to "A" 2883+26, County road;
Crossing No. 23. "E" 2235+15 to "E" 2233+90, Colusa-Colusa Junction road;
Crossing No. 24. "E" 2207+87 to "E" 2208+28, County road;
Crossing No. 25. "H" 2166+87 to "H" 2167+48, County road;
Crossing No. 26. "H" 2133+86 to "H" 2134+81, County road;
Crossing No. 27. "H" 2120+42 to "H" 2120+69, County road;
Crossing No. 28. "H" 2090+96 to "H" 2091+46, County road;
Crossing No. 29. "H" 1825+88 to "H" 1826+42, County road;
Crossing No. 30. "H" 1778+02 to "H" 1778+69, County road;
Crossing No. 31. "H" 1758+94 to "H" 1760+39, County road;
Crossing No. 32. "H" 1737+64 to "H" 1738+06, County road;
Crossing No. 33. "A" 542+15 to "A" 542+76, County road;
Crossing No. 34. "A" 540+24 to "A" 540+44, Public lane in Grimes;
Crossing No. 35. "A" 537+95 to "A" 538+54, Public road in Grimes;
Crossing No. 36. "A" 533+76 to "A" 534+36, Public road in Grimes;
Crossing No. 37. "D" 485+78 to "D" 486+37, County road;
Crossing No. 38. "D" 411+79 to "D" 412+92, County road;
Crossing No. 39. "D" 407+13 to "D" 407+79, County road;
Crossing No. 40. "D" 193+38 to "D" 194+14, County rd. on Howell Pt. levee;
Crossing No. 41. "D" 169+65 to "D" 171+36, County road;
Crossing No. 42. "D" 165+93 to "D" 166+59, County road;
Crossing No. 43. "B-1" 205+24 to "B-1" 205+94, County road;
Crossing No. 44. "B-1" 183+00 to "B-1" 183+70, County road;
Crossing No. 45. "B" 133+73 to "B" 134+23, Public road;
Crossing No. 46. "C" 127+68 to "C" 127+92, Public road;
Crossing No. 47. "C" 21+78 to "C" 22+03, Public road;

All of said crossings to be located as shown by the map and profile attached to the application and to the constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossings and the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Colusa and Hamilton Railroad Company.

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(2) The crossings shall be provided with the necessary crossing plank or guardrails and shall be ballasted with not less than six (6) inches of first-class gravel or stone ballast.

(3) The grades of approach to said crossings shall not exceed eight (8) per cent for first-class county roads and ten (10) per cent for second-class county roads. The effective width of roadbed at crown for said crossings shall not be less than twenty-four (24) feet for first-class county roads and eighteen (18) feet for second-class county roads.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 27th day of August, 1912.

DECISION NO. 201.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY, FOR PERMISSION TO CONSTRUCT ITS SPUR TRACK AT GRADE ACROSS A SPUR TRACK OF THE SOUTHERN PACIFIC COMPANY IN THE CITY OF CHICO, BUTTE COUNTY, CALIFORNIA.

Application No. 201.

Decided August 27, 1912.

REPORT OF THE COMMISSION.

Northern Electric Railway Company, a corporation, having heretofore on August 24, 1912, filed with the Commission its application for permission to construct a spur track at grade across a spur track of the Southern Pacific Company in Chico, Butte County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Northern Electric Railway Company has secured the necessary permit or franchise from the city of Chico to construct said spur track, and that said company has entered into a contract with the Southern Pacific Company for the construction of said track; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that the application should be granted subject to the conditions hereinafter specified,

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It is hereby ordered that permission be hereby granted to Northern Electric Railway Company to construct a spur track at grade across the spur track of the Southern Pacific Company on Main street, city of Chico, Butte County, California, as shown by the map attached to the application, at the intersection of said Main street with Big Chico Creek; subject to the following conditions, viz:

(1) The crossing frogs shall be furnished by the Northern Electric Railway Company, and shall hereafter be maintained in good and first-class condition for the safe operation thereover of trains and cars at the expense of this company.

(2) The contract of date August 1, 1912, entered into between Northern Electric Railway Company and Southern Pacific Company relating to the construction, maintenance, operation and protection hereafter of said crossing is approved by the Commission, subject, however, to such revision or modification with respect to said construction, maintenance, operation and protection thereof, as to this Commission may seem right and proper, and this Commission reserves the right to modify the terms of said contract or revoke its permission authorizing the crossing, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 27th day of August, 1912.

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DECISION No. 202.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY, AN ELECTRICAL CORPORATION, AND OF F. A. WORTHLEY, FOR AN ORDER AUTHORIZING THE ASSIGNMENT AND TRANSFER BY THE SAID F. A. WORTHLEY TO THE SAID SOUTHERN SIERRAS POWER COMPANY OF A CERTAIN FRANCHISE AND FRANCHISE RIGHTS HERETOFORE GRANTED TO AND NOW NOMINALLY HELD BY THE SAID F. A. WORTHLEY, TO ERECT, CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRICAL SYSTEM CONSISTING OF POLES, TOWERS, WIRES, CONDUITS AND OTHER NECESSARY AND CONVENIENT APPARATUS FOR TRANSMISSION AND DELIVERING ELECTRIC ENERGY FOR LIGHT, HEAT, POWER AND OTHER PURPOSES, WITHIN THE CITY OF CORONA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

Application No. 176.

Decided August 29, 1912.

REPORT OF THE COMMISSION.

The Southern Sierras Power Company and F. A. Worthley having filed with this Commission their application for an order authorizing the assignment and transfer by the said F. A. Worthley to said The Southern Sierras Power Company of a certain franchise and franchise rights heretofore, and on the twenty-sixth day of March, 1912, granted by the city of Corona, to said F. A. Worthley by Ordinance No. 241 of the board of trustees of said city to erect, construct, operate, and maintain an electrical system, consisting of poles, towers, wires, conduits and other necessary and convenient apparatus for transmitting and delivering electric energy for light, heat, power and other purposes within said city of Corona, and the board of trustees of Corona having informed this Commission by letter that they do not desire any hearing in this matter, and it appearing to the Commission that this is a case in which a public hearing is not necessary,

It is hereby ordered that said application be and the same is hereby granted.

Dated at San Francisco, California, this 29th day of August, 1912.

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DECISION NO. 203.

IN THE MATTER OF THE APPLICATION OF VALLEJO AND NORTHERN RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS MAIN LINE TRACK AT GRADE ACROSS CERTAIN STREETS AND HIGHWAYS IN THE TOWNS OF SUISUN, FAIRFIELD AND VACAVILLE, SOLANO COUNTY, CALIFORNIA; ALSO ACROSS CERTAIN INTERVENING PUBLIC HIGHWAYS IN SAID COUNTY BETWEEN SAID TOWNS.

Application No. 205.

Decided August 29, 1912.

REPORT OF THE COMMISSION.

Vallejo and Northern Railroad Company, a corporation, having on August 27, 1912, filed with the Commission its application for permission to construct its main line track at grade across certain public streets and highways in the towns of Suisun, Fairfield, Vacaville, and across certain public highways intervening between said towns, all in Solano County, California; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that permits or franchises have been secured from the proper authorities of said towns to construct crossings therein at grade; and it further appearing that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing of said railroad with said public streets and highways, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Vallejo and Northern Railroad Company to construct its main line track at grade across certain public streets and highways in Solano County, California, located as follows:

A. In the town of Suisun, beginning at the northern limits of said town at its intersection with Union avenue, thence south on Union avenue crossing Ohio, Illinois, Arkansas, Loui and Common streets to Main street; thence south on Main street crossing Sacramento, Solano, California and Morgan streets; thence in a southerly direction crossing Line street and Kellogg street.

B. In the town of Fairfield, beginning at the southern limits of said town on Union avenue; thence north on Union avenue crossing Broadway, Delaware and Missouri streets to Texas street; thence over and across Texas street to Jefferson street; thence on Jefferson street in a

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northerly direction crossing Empire street and Kentucky street to the north city limits of the town of Fairfield.

C. In the town of Vacaville, beginning at the west limits of said town on Main street; thence east on Main street crossing West street, Cernon street, Parker street, Dobbins street, Elizabeth street and Davie street to Nevada Block in said town; thence in a southerly direction crossing Catherine street, Mason street and Stevenson street to the south limits of said town; also to cross with a spur track Main street between Nevada Block and Ulatis Creek.

D. Public highways in Solano County, California, located as follows:

Crossing No.	1.	Station	15+67 to	15+05,	County road No. 329;
Crossing No.	2.	Station	1078+95 to	1078+27,	County road No. 80;
Crossing No.	3.	Station	1129+17 to	1129+81,	County road No. 329;
Crossing No.	4.	Station	1189+70 to	1190+13,	County road No. 462;
Crossing No.	5.	Station	1204+99 to	1205+81,	County road No. 330;
Crossing No.	6.	Station	1220+48 to	1220+95,	County road No. 360;
Crossing No.	7.	Station	1259+72 to	1260+63,	County road No. 366;
Crossing No.	8.	Station	1312+08 to	1312+85,	County road No. 118;
Crossing No.	9.	Station	1423+09 to	1424+75,	County road No. 118;
Crossing No.	10.	Station	1471+42 to	1471+86,	County road No. 422;

All of said crossings described above to be constructed in accordance with maps and profiles attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings and the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Vallejo and Northern Railroad Company.

(2) All crossings of public streets in towns shall be constructed of such width and otherwise as may be necessary to comply with the terms of ordinances permitting their construction, and in no case less than thirty (30) feet in width. Crossings of first-class county roads shall be constructed on an effective width of not less than twenty-four (24) feet and of second-class county roads of not less than eighteen (18) feet. The maximum gradient of approach for crossings of public streets and first-class county roads shall not exceed eight (8) per cent and for second-class county roads not exceeding ten (10) per cent.

(3) Crossings of public streets in towns shall be ballasted with first-class material and shall otherwise be constructed as may be required by the authorities of the towns. Crossings of county roads outside of towns shall be provided with the necessary plank or guardrails and ballasted with not less than six (6) inches of stone, gravel or other suitable ballast material.

(4) All crossings shall be provided with suitable standard sign posts or warnings marked "Railroad Crossing" in black letters not less than six (6) inches in height against a white background.

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(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of August, 1912.

DECISION NO. 204.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A WYE TRACK AT GRADE ACROSS BIDWELL STREET, CITY OF FOLSOM, SACRAMENTO COUNTY, CALIFORNIA.

Application No. 206.

Decided August 29, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on August 28, 1912, filed with the Commission its application for permission to construct a wye track at grade across Bidwell street, city of Folsom, Sacramento County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct a wye track at grade across Bidwell street, city of Folsom, Sacramento County, California, at or near the east end of Forest street as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing said crossing, together with the expense of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by Southern Pacific Company.

(2) The crossing shall be provided with the necessary plank and guardrails and ballasted with gravel or broken stone or other suitable materials, and in every way made safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders

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relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of August, 1912.

DECISION No. 205.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT TWO SPUR TRACKS AT GRADE ACROSS TUOLUMNE STREET, IN THE CITY OF FRESNO, FRESNO COUNTY, CALIFORNIA.

Application No. 207.

Decided August 29, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on August 28, 1912, filed with the Commission its application for permission to construct two spur tracks at grade across Tuolumne street, city of Fresno, Fresno County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific Company has secured the necessary permit or franchise to construct said spur tracks from the city of Fresno, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at the proposed points of crossing, and that said application should be granted subject to the following conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct two spur tracks at grade across Tuolumne street, city of Fresno, Fresno County, California, between "G" street and "H" street as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing said crossings and the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) The crossings shall be provided with the necessary crossing plank and guardrails and ballasted with suitable material to accommodate the safe passage of vehicles and other road traffic.

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(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of August, 1912.

DECISION NO. 206.

IN THE MATTER OF THE APPLICATION OF THE ALAMEDA SUGAR COMPANY FOR A PUBLIC ROAD CROSSING AT GRADE FROM THE SPUR TRACK LEAVING THE MAIN LINE OF THE SOUTHERN PACIFIC COMPANY AT HALVERN.

Application No. 31.

Decided September 3, 1912.

REPORT OF THE COMMISSION.

The Alameda Sugar Company having made written request to this Commission on August 31, 1912, that the above entitled application be dismissed,

It is hereby ordered that the above entitled application be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 3d day of September, 1912.

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DECISION NO. 207.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE IN BLUXOME STREET AND ACROSS FIFTH STREET IN THE CITY OF SAN FRANCISCO, SAN FRANCISCO COUNTY, CALIFORNIA.

Application No. 175.

Decided September 3, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on August 2, 1912, filed with the Commission its application for permission to construct a spur track at grade across Fifth street, city of San Francisco, San Francisco County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the necessary permit or franchise to construct said spur track has been secured from the city of San Francisco, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing with Fifth street, and that said application should be granted subject to the following conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Southern Pacific Company to construct a spur track in Bluxome street and across Fifth street in the city of San Francisco, San Francisco county, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing and the expense of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Southern Pacific Company.

(2) Said crossing shall be provided with the necessary crossing plank or guardrails, and shall be ballasted with broken stone or gravel not less than six inches in thickness, and in every way made safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 3d day of September, 1912.

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DECISION No. 208.

IN THE MATTER OF THE APPLICATION OF THE CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER PERMITTING THE EXERCISE OF RIGHTS UNDER A FRANCHISE HERETOFORE GRANTED BY THE CITY OF EXETER.

Application No. 208.

Decided September 3, 1912.

REPORT OF THE COMMISSION.

The Central California Gas Company having on April 20, 1912, filed with this Commission its application No. 15, being in part for a preliminary order under the provisions of section 50*c* of the Public Utilities Act, declaring that this Commission will hereafter upon application issue certificate that public convenience and necessity require the exercise of rights or privileges under a franchise not now but hereafter to be secured from the city of Exeter, and this Commission having on May 30, 1912, rendered its decision in the above mentioned application No. 15, in which decision this Commission rendered the order applied for, and the franchise therein mentioned now having been granted by the city to the Central California Gas Company, to wit, by Ordinance No. 30 of the city of Exeter, adopted July 24, 1912, which ordinance grants to the applicant the right to construct and operate a gas distributing system within the city of Exeter, in Tulare County, and the Central California Gas Company having now applied to this Commission for an order permitting it to exercise the rights and privileges granted under the above mentioned franchise,

It is hereby declared that public convenience and necessity require the exercise of the rights and privileges granted to the Central California Gas Company by the city of Exeter in its said Ordinance No. 30.

Dated at San Francisco, California, this 3d day of September, 1912.

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DECISION No. 209.

PACIFIC GAS AND ELECTRIC COMPANY
vs.
GREAT WESTERN POWER COMPANY.

Case No. 274.

Decided September 3, 1912.

REPORT OF THE COMMISSION.

The Pacific Gas and Electric Company, complainant in the above entitled action, having made written request to this Commission on August 30, 1912, that the above entitled action be dismissed, and the Commission being of the opinion that such dismissal will not in any way prejudice the interests of any parties concerned in the above entitled action,

It is hereby ordered that the same be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 3d day of September, 1912.

DECISION No. 210.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS.

Application No. 192.

Decided September 4, 1912.

Held, That although an inquiry is not necessary such as would be made upon a rate investigation, upon the facts the Commission will be reasonably safe in authorizing $208,000 of the bonds asked for in connection with the refunding of obligations. The remaining sums necessary for this purpose will be secured from the sale of stock or in some other way. Additional bonds permitted to be issued for the development of applicant's business.

A. H. Sweet, for applicant.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

San Diego Consolidated Gas and Electric Company applies for an order of this Commission authorizing the issue of bonds having a face value of $208,000 for the refunding of lawful obligations and $42,000 for the acquisition of property and the construction, completion, extension and improvement of facilities, as will appear hereinafter in greater detail.

Applicant supplies the city of San Diego and surrounding territory as far south as Tia Juana, as far east as Foster and as far north as Del Mar with gas and electricity and is the only company in the field. The city of San Diego has a population of over sixty thousand people, and both the city and the surrounding territory are growing rapidly. Applicant was incorporated on March 31, 1905, with an authorized capital stock of $1,500,000, divided into 15,000 shares of the par value of $100 each. Of the amount authorized, 10,000 shares having a par value of $1,000,000, were common and 5,000 shares having a par value of $500,000 were preferred. Of the amount so authorized, all the preferred stock, and 6,900 shares of the common stock, having a par value of $690,000, were actually issued. These shares were issued largely for the property which applicant acquired from its predecessor, the San Diego Gas and Electric Light Company. There is no evidence as to the actual value of the property when acquired by applicant, nor does applicant claim that it was equal to the par value of the stock. In February, 1909, the authorized capital stock was increased from $1,500,000 to $3,500,000, consisting of 35,000 shares having a par value of $100 each, and divided into 10,000 shares of common stock and 25,000 shares of preferred stock. The total capital stock issued under this authorization and up to the subsequent further amendment of the articles of incorporation in 1912, consisted of 18,000 shares of preferred stock, having a par value of $1,800,000 and 7,350 shares of common stock, having a par value of $735,000, making a total of $2,535,000. The additional shares so issued in excess of those issued under the first authorization were sold to the public at or near par and the proceeds used in the development of the plant. In March, 1912, the articles of incorporation were again amended, so that of the total authorized capital stock amounting to 35,000 shares having a par value of $3,500,000, the authorized preferred stock was reduced from 25,000 shares to 5,000 shares, having a par value of $500,000, and the authorized common stock was increased from 10,000 shares to 30,000 shares, having a par value of $3,000,000. In the meantime, practically all of the common stock had been acquired from its holders by the Standard Gas and Electric Company, which is owned by H. M. Byllesby & Com-

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pany of Chicago and the preferred stock had either been so acquired or called in by applicant at $110 per share.

On August 16, 1912, there were outstanding 109 shares of preferred stock out of a total authorized issue of 5000 shares, and 27,150 shares of common stock, having a par value of $2,715,000. Of the common stock, all except 18 shares is owned by the Standard Gas and Electric Company.

Applicant's total authorized bonded indebtedness consists of 6,000 5 per cent thirty year bonds having a face value of $1,000 each, totaling $6,000,000, secured by deed of trust or mortgage dated March 1, 1909, to Harris Trust and Savings Bank, an Illinois corporation, and Los Angeles Trust Company, a California corporation, as trustees. Of the bonds so authorized, 3,175 having a face value of $3,175,000 are issued and outstanding. The bonds hitherto issued have been sold to Harris Trust and Savings Bank at prices ranging from 88 to and including 94 and accrued interest, under a contract providing for the purchase of all the bonds issued. Under the provisions of said contract, the bonds which applicant now desires to issue are to be sold to the trust company for 94 and 95 and accrued interest.

The trust deed provides that no escrow bonds shall be issued unless and until the net earnings of the company for the preceding twelve months, after deducting all operating expenses, including taxes and proper and reasonable charges for maintenance and renewals, shall have been in each case at least twice the annual interest charge on the bonds outstanding and those applied for. Applicant's profit and loss statement for the year 1911 is as follows:

Earnings, gas and electricity		$745,660 36
Operating expenses		366,106 25
Net earnings from operation		$379,554 11
Miscellaneous receipts		8,159 79
Total net earnings		$387,713 90
Deductions:		
Bond interest	$114,517 46	
General interest	2,944 05*	
Organization expense	3,000 00	
Bond discount	8,834 44	
		129,407 85
Net income		$264,306 05
Expended on account of new business	$10,152 17	
Operating charges carried to suspense account	2,582 42	
		12,734 59
Amount carried forward		$251,571 46
Amount forward		$251,571 46
Dividends		199,791 20
Surplus		$51,780 26

*Earned as against $4,501.45 deducted previous year.

NOTE.—No deductions have been made for depreciation prior to June, 1912, when $73,500.00 was set aside.

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It will be noted that applicant paid a 7 per cent dividend on its entire capital stock, both common and preferred, and that it then had remaining for the year a surplus of $51,780.26, but that no deductions were made during that year for depreciation. Applicant's rate for gas is $1.00 per thousand. Its rate for electric energy is graded from 9 cents down for lighting and from 8 cents down for power. Its electric energy is produced entirely from steam.

Applicant now asks authority to issue bonds of the face value of $208,000 to refund outstanding obligations and $42,000 for the acquisition of property and the construction, completion, extension and improvement of facilities. The obligations consist of the following items:

Demand note, 7 per cent, executed July 13, 1912, to Standard Gas and Electric Company	$235,000 00
Demand note, 7 per cent, executed July 20, 1912, to Standard Gas and Electric Company	15,000 00
Accounts payable as of July 31, 1912	101,456 91
	$351,456 91

The moneys derived from the notes and represented by the accounts payable were devoted to the following uses all of which, according to the testimony of applicant's vice president, represent permanent additions and improvements made since March 23, 1912:

Real estate and buildings—gas department	$3,974 14
Gas plant	16,505 44
Gas mains	75,892 51
Gas services	38,301 07
Gas meters	4,265 54
Real estate and buildings—electric department	5,952 32
Steam plant	7,760 82
Electric plant	12,613 88
Street wire and overhead wires, overhead	103,968 30
Street wires and wires, underground	41,684 88
Arc light installation	701 77
Electric services	9,191 20
Electric meters	13,691 58
Transformers	16,798 40
Office building	155 06
	$351,456 91

Under section 1 of article III of applicant's trust deed, the sum of $73,500 was set aside on June 1, 1912, for what is called a "depreciation and renewal fund." Under the terms of the trust deed, applicant is entitled, as far as affects the relationship between itself and the trustee, to call upon the trustee for certification and delivery of bonds amounting to 75 per cent of the actual and reasonable cash cost to applicant of permanent extensions and improvements to its plant, properties and equipment. By taking 75 per cent of the amount remaining after subtracting $73,500 from said total of $351,456.91,

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applicant derives the sum of $208,000 as to which authorization to issue bonds is requested in this connection.

If this were a rate inquiry, I should question very closely certain items included in the total of $351,456.91, particularly an item of 7½ per cent for engineering which is credited to H. M. Byllesby & Company on all construction work, whether it demands the services of Chicago engineers or not. I should question also certain charges for new construction work in cases in which existing gas mains have been taken up and larger mains substituted, without deduction for the value of the existing mains. Under all circumstances of the present case, however, I am of the opinion that this Commission will be reasonably safe in authorizing the issue of bonds in the amount asked for in connection with the refunding of obligations. The remaining sums necessary for this purpose will be secured from the sale of stock or in some other way.

Applicant also asks authority to issue bonds in the face value of $42,000 to pay for the acquisition of property and the extension of facilities as follows:

Single phase feeder regulators	$13,000 00
Lamp black dryer	5,050 00
Briquetting machine	4,000 00
New 520-horsepower boilers	23,000 00
Incomplete underground system	1,000 00
Gas extensions	3,053 25
Electric extensions. The estimated cost of this improvement, less material returnable, is	7,113 37
	$56,216 62

Applicant furnished bids and estimates covering most of these items. The desired amount, being $42,000, is secured by taking 75 per cent of the total of $56,216.62. I am satisfied that the foregoing items are reasonably necessary in the development of applicant's business and that the proceeds from the issue of bonds as requested are reasonably necessary for said purpose.

After a careful investigation into the application and a cursory inspection of applicant's plant and proposed improvements, I recommend that the application be granted and submit herewith the following form of order:

ORDER.

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission of the State of California for the consent of the Commission to the issuance by said company of bonds in the face value of $250,000, said bonds to be payable on the first day of March, 1939, and to bear interest at 5 per cent per annum, payable semi-annually and secured by a trust deed or mortgage upon all the property of the company, and a public hearing having been duly held upon said

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application and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension, and improvement of its facilities and the discharge and refunding of its obligations and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that the Railroad Commission of the State of California hereby authorize the issue by San Diego Consolidated Gas and Electric Company of $250,000, the face value of principal of bonds of said company, maturing the first day of March, 1939, redeemable on March 1, 1914, or on any interest date thereafter, at par, accrued interest and a premium of 5 per cent on the principal thereof, and to bear interest at 5 per cent per annum, payable semi-annually, under and in pursuance of the terms of the trust deed or mortgage heretofore and on the first day of March, 1909, made and executed by said San Diego Consolidated Gas and Electric Company to Harris Trust and Savings Bank and Los Angeles Trust Company, as trustees, upon the conditions following and not otherwise, to wit:

1. San Diego Consolidated Gas and Electric Company shall sell said bonds hereby authorized so as to net the said company not less than 94 per cent of the par value of the principal thereof, besides interest accrued thereon.

2. The proceeds of the said bonds shall be applied only to the following purposes, that is to say:

(*a*) The proceeds from the sale of bonds numbered 3385 to 3425 inclusive, having a total face value of $42,000, shall be applied for the acquisition of property and the construction, completion, extension and improvement of its facilities, in amounts not to exceed 75 per cent of the items hereinafter specified for each of the following items:

Single phase feeder regulators	$13,000 00
Lamp black dryer	5,050 00
Briquetting machine	4,000 00
New 520 horsepower boilers	23,000 00
Incomplete underground system	1,000 00
Gas extensions	3,053 25
Electric extensions. The estimated cost of this improvement, less material returnable, is	7,113 37

(*b*) The proceeds from the sale of bonds numbers 3,176 to 3,383 inclusive, having a face value of $208,000, shall be applied for the discharge and lawful refunding of obligations of the company incurred for the acquisition of property and the construction, completion, extension and improvement of its facilities not to exceed the proceeds derived from the sale of bonds hereby authorized, of the face value of $208,000,

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the proceeds to be applied to the following obligations so incurred or some portion or portions thereof:

Demand note, 7 per cent, executed July 13, 1912, to Standard Gas and Electric Company	$235,000 00
Demand note, 7 per cent, executed July 20, 1912, to Standard Gas and Electric Company	15,000 00
Accounts payable as of July 31, 1912	101,456 91

3. San Diego Consolidated Gas and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with the provisions of this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

4. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

5. The payment by applicant of the fee specified in section 57 of the Public Utilities Act shall be a condition precedent to the effectiveness of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of September, 1912.

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DECISION NO. 211.

IN THE MATTER OF THE APPLICATION OF NORTHERN CALIFORNIA POWER COMPANY, CONSOLIDATED, FOR AN ORDER AUTHORIZING IT TO ISSUE FIVE HUNDRED THOUSAND DOLLARS FACE VALUE, OF FIVE YEARS SIX PER CENT DEBENTURE NOTES.

Application No. 156.

Decided September 5, 1912.

In modification of the former order herein, and upon request of applicant, and upon further investigation, *Held*, that applicant may expend the proceeds of the note issue heretofore authorized to be issued.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

The Railroad Commission having by its order dated August 14, 1912, in the proceeding entitled as above, granted to applicant permission to issue five hundred debenture notes, each of the face value of $1,000, bearing numbers one (1) to five hundred (500), inclusive, said debenture notes to bear date July 15, 1912, to mature July 15, 1917, to bear interest at six (6%) per cent per annum, and to be sold at a price of not less than $960 for each debenture note of the face value of $1,000; and said order containing, among others, the provision that all moneys received from the sale of said debenture notes should be placed in applicant's treasury and that no moneys should be paid out therefrom in the liquidation of outstanding indebtedness, or for any other purpose, until the claim which it might be intended to pay should be presented to the Railroad Commission, so that said Commission might determine whether said claim was in whole or in part reasonably chargeable to operating expenses or to income; and applicant having by letter dated August 21, 1912, asked for permission to pay claims amounting to $315,133.66 properly chargeable to operating expenses on the plea that the company has expended for the construction of its plant a greater sum than this, for which it has not been reimbursed by the proceeds of sales of stocks, bonds or other evidences of indebtedness, payable at periods of more than one year after date, and for permission to pay claims amounting to $164,866.34 representing obligations contracted for the purchase of material or services rendered in connection with additions to plant; and the Railroad Commission having made an examination of applicant's books and property and having found to its satisfaction that a sum in excess of $315,133.16 has been

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expended out of income for the construction, completion, extension and improvement of its facilities within five years next prior to the filing of its application, which sum might have been expended to meet said operating expenses.

It is hereby ordered that Northern California Power Company, Consolidated, be and the same is hereby authorized to expend the proceeds from the sale of said five hundred (500) debenture notes, amounting to $480,000 now on deposit in the Mercantile National Bank of San Francisco, in the amounts and for the purposes hereinafter designated and subject in all other respects to the terms and conditions of said order of the Railroad Commission dated August 14, 1912, and not otherwise, to wit:

1. For the discharge of the obligations specified in said letter of August 21, 1912, incurred for the purchase of material and for services rendered in connection with additions to plant, not to exceed the sum of $164,866.34. If after paying all of said obligations, any sum remains unexpended, such sum may then be expended for the purposes specified in paragraph 2 hereof.

2. For the discharge of obligations incurred for the operation and maintenance of its plant, but contracted as a result of additions to plant amounting to a similar sum, the sum of $315,133.66, less such amount as applicant may heretofore have paid on three certain notes under authorization contained in letters from this Commission to applicant, dated August 28, 1912, and August 29, 1912. The sums so paid on said notes need no longer be kept in a separate fund.

Dated at San Francisco, California, this 5th day of September, 1912.

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DECISION NO. 212.

IN THE MATTER OF THE APPLICATION OF E. H. ROLLINS & SONS, ANGLO-CALIFORNIA TRUST COMPANY AND UNITED RAILROADS OF SAN FRANCISCO FOR AN ORDER AUTHORIZING THE EXECUTION OF A CAR EQUIPMENT TRUST.

Application No. 148.

Decided September 7, 1912.

Held. That the proposed deed of trust and conditional sale is reasonable and proper in so far as the Commission has jurisdiction over the same and its execution permitted.

W. S. Goodfellow, for E. H. Rollins & Sons.

Charles N. Black, and *Wm. M. Abbott*, for United Railroads.

Alexander T. Vogelsang, *Daniel C. Murphy* and *Byron Mauzy*, for city of San Francisco.

REPORT OF THE COMMISSION.

THELEN and EDGERTON, *Commissioners.*

This is an application for an order of this Commission authorizing applicants to enter into an agreement of trust and conditional sale of sixty-five street railway cars. United Railroads of San Francisco, hereinafter called the United Railroads, is a corporation operating a street railway within the city and county of San Francisco, with one line of railway running into the county of San Mateo. E. H. Rollins & Sons, hereinafter called the bankers, is a bond and banking house doing business in San Francisco and elsewhere. Anglo-California Trust Company, hereinafter called the trustee, is a bank and trust company with its principal place of business in San Francisco.

The United Railroads needs sixty-five additional cars for its business in San Francisco and San Mateo County. In order to secure these cars without mortgaging its property, against which $39,925,000 of bonds and an additional indebtedness of $4,088,731 are already outstanding, the United Railroads desires to enter into what is known as a car equipment trust. A draft of the proposed agreement of trust and conditional sale is attached to the application marked "Exhibit B" and applicants request this Commission's order authorizing their execution thereof.

The essential provisions of the agreement are as follows: The bankers agree to buy from the manufacturers the necessary sixty-five additional

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cars. The title to the cars shall vest in the trustee. The cars shall be delivered to the United Railroads for use, but the title shall remain in the trustee. The United Railroads shall pay to the bankers the sum of $25,000 upon the execution of the agreement and an additional $49,000 at a later date in 1912. Of this amount, $9,000 will be retained by the bankers for their services. The United Railroads shall pay to the trustee for the benefit of the bankers $300,000 in ten equal annual installments of $30,000 each, with interest on the sum of $300,000 at the rate of six per cent per annum. The trustee will issue to the bankers its trust certificates in the sum of $300,000, consisting of three hundred certificates of $1,000 each, bearing interest at six per cent per annum, and running serially, so that thirty certificates become payable each year. The United Railroads guarantee the payment of principal and interest on the certificates. Payment by the United Railroads of the certificates and the coupons attached shall be payment and satisfaction of their obligation to pay to the trustee said sum of $300,000 and interest. The United Railroads may redeem the certificates at any time by paying 102½ and accrued interest. When the United Railroads have paid the amounts agreed in full, they shall redeliver the cars to the trustee, which will then sell the cars to the United Railroads for the total sum of $100. The agreement has been drawn with care to prevent its being a mortgage on the property of the United Railroads. The United Railroads do, however, guarantee the payment of the trust certificates and in that respect being themselves within the terms of section 51*a* of the Public Utilities Act, so that an order of this Commission authorizing the execution of the agreement is necessary.

It is clear that the additional cars are much needed. We have not in this application examined the financial condition of the United Railroads further than to assure ourselves that they will be able to pay the $30,000 per year specified in the agreement. Mr. Charles N. Black, vice-president and general manager of the United Railroads, testified positively to the ability of the United Railroad to make such payment during the life of the agreement after paying operating expenses, and interest and sinking fund on their present obligations. The proposition amounts in effect to their securing money at six per cent with a three per cent discount on the obligations.

On the request of the Commission, three supervisors of the city and county of San Francisco were present at the hearing. While stating frankly that the proposed type of cars will remove some of the most obvious objections to the type of cars now in use in San Francisco, the supervisors objected to the proposed type on two grounds:

1. That the width of the cars is so great as to interfere with traffic in San Francisco, particularly on narrow streets. The width proposed is 9 feet, 2 inches, and that desired by the supervisors is 8 feet, 6 inches.

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2. That the seats in the inner portion of the car should be arranged crosswise instead of lengthwise. The United Railroads claim that under their plan just as many people can be seated, while there will be more room in the aisle for standing and passing purposes.

The supervisors filed with the Commission in this connection a report of Bion J. Arnold to the city and county of San Francisco on its street railroad system.

Under subsection 27 of section 1 of chapter 2 of article II of the charter of the city and county of San Francisco, the board of supervisors has the power "to regulate street railroads, tracks and cars." Under this provision, the board of supervisors has the power to regulate the type of cars to be used by the United Railroads and such cars as may be purchased under the agreement hereby authorized must accord with such requirements as the board of supervisors may lawfully establish. As it appears from the testimony that no contracts for the purchase of the cars or their component parts have been entered into, it is not too late for the city to take such action as it may deem advisable without inflicting a hardship upon the United Railroads.

We consider the proposed deed of trust and conditional sale to be reasonable and proper in so far as this Commission has jurisdiction over the same and recommend that the applicants be authorized to execute the same.

We submit herewith the following form of order:

ORDER.

E. H. Rollins & Sons, Anglo-California Trust Company and United Railroads of San Francisco, having filed with this Commission their application for an order of this Commission authorizing them to enter into a certain agreement of trust and conditional sale, also called a car equipment trust, providing in effect for the purchase by said United Railroads of sixty-five cars for the sum of $365,000, a copy of which proposed agreement of trust and conditional sale is attached to the application and marked "Exhibit B," and a public hearing having been held on said application, and it appearing to the Commission that the proposed agreement is a proper and reasonable one, subject to the conditions hereinafter specified,

It is hereby ordered that the applicants be and they are hereby authorized to execute an agreement substantially in the form of Exhibit B, subject to the following express conditions precedent, and not otherwise:

1. The language of said agreement of trust and conditional sale shall be so altered as to show clearly that the certificates of trust therein

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provided for are serial certificates, of which thirty (30) shall be due and payable each year.

2. A certified copy of the agreement of trust and conditional sale, when executed shall be filed with this Commission, and said agreement shall be approved by it before any trust certificates are issued thereunder.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of September, 1912.

DECISION NO. 213.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF FIVE BONDS OF THE FACE VALUE OF ONE THOUSAND DOLLARS EACH.

Application No. 160.

Decided September 7, 1912.

H. H. Trobridge, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Applicant asks for an order of this Commission authorizing the issue of five (5) bonds of the face value of $1,000 each, to be secured by applicant's trust indenture to Los Angeles Trust and Savings Bank, trustee, dated July 1, 1911.

Applicant's articles of incorporation were filed in the office of the Secretary of State of California, on August 19, 1909. Applicant's total authorized capital stock is the sum of one million dollars, divided into ten thousand shares of the par value of $100 each, of which five thousand shares are preferred stock and five thousand shares are common stock. Of the stock so authorized, 4,000 shares of preferred stock and 4,009 shares of common stock have been issued.

Applicant's authorized bonded indebtedness is one million dollars, the bonds being dated July 1, 1911, bearing interest at the rate of six (6%) per cent per annum and secured by trust deed or mortgage to Los Angeles Trust and Savings Bank, dated July 1, 1911. Of the amount

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of bonds so authorized, bonds of the face value of $659,000 were issued and outstanding on July 22, 1912.

In November, 1909, applicant acquired from Southern California Edison Company and Merchants' Mutual Light and Power Company all of the electric and gas properties of said two companies in the city of Santa Barbara and the territory adjacent thereto. In return for said property, applicant delivered to its vendors 4,000 shares of its common stock, 4,000 shares of its preferred stock and bonds of the face value of $500,000. There is no claim that at the time of the purchase the property acquired was actually worth the par or face value of the stocks and bonds given for it. Of the outstanding capital stock all of the preferred stock, being 4,000 shares and 3,365 shares of the common stock, are owned and held by Southern California Edison Company and 635 shares of its common stock are owned and held by Merchants' Mutual Light and Power Company.

Applicant now asks for an order authorizing it to issue five (5) bonds of the face value of $1,000 each, the proceeds thereof to be used for the discharge and lawful refunding of certain of its obligations, which will hereinafter be specified in greater detail. At the hearing applicant was unable to specify the precise purposes for which the proceeds of the bonds are to be used, but applicant has now filed with this Commission the affidavit of its treasurer to the effect that applicant has borrowed from Southern California Edison Company the sum of $5,142.24 for the purpose of paying obligations incurred by applicant for the acquisition of property and the construction, completion, extension and improvement of its facilities as follows:

Buildings	$2,356 28
Electric distributing system	2,785 96
	$5,142 24

I am convinced that the moneys represented by the obligation to the Southern California Edison Company have been expended for the acquisition of property and for the construction, completion, extension and improvement of applicant's facilities and that this is consequently a proper case in which to authorize the issue of bonds as against the amount so expended.

Such of applicant's bonds as have been sold subsequent to the original acquisition of applicant's property have been sold for 95 and 96. Applicant feels certain that it will be able to secure at least 95 for its bonds, but asks this Commission's authorization to sell for as low as 90. In view of the sales which have actually taken place, I recommend that this Commission's authorization be to sell for at least 95. If applicant finds it impossible to dispose of its bonds at that figure, it may ask for a modification of the order in this respect.

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By reason of the small amount involved in this application and of the margin which doubtlessly exists as between the actual value of applicant's property and the amount of bonds outstanding, I have not made in this case as careful and detailed an examination of the facts, particularly with reference to the detailed items for which moneys have heretofore been expended and of applicant's ability to meet the interest and sinking fund on the obligations hereby authorized, as I would have done had the amount been larger, and as this Commission will doubtless do if the applicant in this case asks for the authorization of further bond issues in material amounts.

I recommend that the application be granted, and submit herewith the following form of order:

ORDER.

Santa Barbara Gas and Electric Company having applied to the Railroad Commission for an order of this Commission authorizing the issuance by said company of bonds to the amount of five thousand ($5,000) dollars, face value, said bonds to be payable on the first day of July, 1941, and to bear interest at six (6%) per cent per annum, payable semiannually, and secured by trust deed or mortgage upon all the property of the applicant, and a hearing having been duly held upon said application, and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the discharge and lawful refunding of its obligations, as will hereinafter appear with greater particularity, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Santa Barbara Gas and Electric Company be, and the same is, hereby authorized to issue five (5) bonds of the face value of $1,000 each, being numbered 985 to 989, inclusive, maturing the first day of July, 1941, redeemable on January 1, 1912, or upon any semiannual interest payment date thereafter, at par, accrued interest and a premium of five (5) per cent on the principal thereof, and to bear interest at six (6%) per cent per annum, payable semiannually, under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the first day of July, 1911, made and executed by said Santa Barbara Gas and Electric Company to Los Angeles Trust and Savings Bank, as trustee, upon the conditions following and not otherwise, to wit:

1. Santa Barbara Gas and Electric Company shall sell the bonds hereby authorized so as to net the company not less than ninety-five per cent of the par value of the principal thereof, with accrued interest.

2. The proceeds of said bonds shall be applied to the following pur-

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pose, that is to say, for the discharge and lawful refunding of the obligations of said company to Southern California Edison Company, incurred for the acquisition of property and the construction, completion, extension, and improvement of its facilities in the amount of $5,142.24, as specified in affidavit of Herbert F. Keenan, applicant's treasurer, dated August 30, 1912, and on file with this Commission.

3. Santa Barbara Gas and Electric Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with the provisions of General Order No. 24 of this Commission, which order is so far as applicable is made a part of this order.

4. The authority hereby given to issue such bonds shall apply only to bonds issued by applicant on or before the thirtieth day of June, 1913.

The effectiveness of this order and of each portion thereof is conditioned upon the prior payment to this Commission of the minimum fee specified in section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of September, 1912.

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DECISION NO. 214.

PACIFIC GAS AND ELECTRIC COMPANY.
vs.
GREAT WESTERN POWER COMPANY.

APPLICATION OF PHILLIP DUFFY FOR INTERPRETATION OF ORDER AS AFFECTING NAPA VALLEY ELECTRIC COMPANY.

Case No. 269.

Decided September 7, 1912.

Order interpreting the order previously entered in this matter with respect to the service to be furnished by Great Western Power Company in "sections of Napa County outside of incorporated cities and towns and other than the district now served by the Napa Valley Electric Company."

D. M. Duffy, for applicant.
Percy S. King, for Napa Valley Electric Company.
Chaffee Hall, for Great Western Power Company.

REPORT OF THE COMMISSION.

THELEN and GORDON, *Commissioners.*

This is an application of Phillip Duffy on behalf of himself and certain of his neighbors residing east and north of Oak Knoll Station, on the line of the Southern Pacific Company, north of Napa, for an interpretation of this Commission's order in the above entitled case, in so far as it affects the district served by the Napa Valley Electric Company. In its order in the case entitled as above, dated June 18, 1912, this Commission granted the application of Great Western Power Company for permission to transmit and distribute electrical energy in the city of Napa and in all other "sections of Napa County outside of incorporated cities and towns other than the *district now served by the Napa Valley Electric Company.*" A dispute has arisen with reference to the district which was served by Napa Valley Electric Company on the date of the order. It appears from the testimony in this case that Napa Valley Electric Company is distributing electricity in a considerable portion of what is known as the Napa Valley. On June 18, 1912, the most southerly point at which the company was actually delivering electricity was the farm of J. Peres, which is located on the west side of the Southern Pacific Company's right of way, about one mile and a half north of the station of Oak Knoll. The Napa Valley Electric Company, however, had for sometime prior to said date constructed their transmission line to a point along the right of way of

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the Southern Pacific Company, a few hundred yards north of Oak Knoll Station. This line was a live line, but there had been no delivery of electricity therefrom south of the farm of Mr. Peres. The Napa Valley Electric Company had made efforts to secure the patronage of the farmers living to the east of the line running from the farm of Peres southerly to Oak Knoll, but had been unsuccessful in their efforts. It appeared at the hearing that these farmers are unwilling to take service from the Napa Valley Electric Company for the reason that this company expects the farmers to pay for the line and the transformers in the first instance, the cost thereof to be returned ultimately to the farmers in the shape of deductions from their monthly bills. These farmers are all desirous that the Great Western Power Company be permitted to serve them.

The question at issue is the proper definition to be given to the words "district now served by the Napa Valley Electric Company" as those words are used in this Commission's order of June 18, 1912. We are convinced that the southerly limit of this district is the farm farthest south which the Napa Valley Electric Company was actually serving on June 18, 1912. There is a fundamental distinction between serving a territory and being willing or ready to serve it. While it is true that the Napa Valley Electric Company had built a transmission line south of the farm of Peres, they had not succeeded in inducing any person south of that farm to take service from them, and the farmers were all holding off because they did not like the terms on which the Napa Valley Electric Company was willing to serve them.

If this position is not the correct one, there will be nothing to prevent an electric company from running a few lines into territory theretofore unserved, and then claim, even though it had no customers there, that it was serving this territory, and that another company would consequently be compelled to apply to this Commission for a certificate of public convenience and necessity before it could build into such territory. We are convinced that such an interpretation would be contrary to the spirit of the Public Utilities Act.

In defining the language used in this Commission's order of June 18, 1912, the Commission is not to be understood as limiting the district served by the Napa Valley Electric Company to the actual consumers of electricity from its lines on June 18, 1912. A person who on that date was not taking electricity might nevertheless be living in the general district which was served by said company. This district consists of the Napa Valley, with certain limits to the north and to the south.

The effect of this decision will be to permit both the Napa Valley Electric Company and the Great Western Power Company to serve the disputed territory between Oak Knoll and the southerly line of the district herein defined.

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At the hearing representatives of the Veteran's Home at Yountville, lying several miles to the north of the farm of Peres, appeared and asked that the Great Western Power Company be given permission to sell electrical energy to them. This Commission pointed out that at the hearing on the application of the Great Western Power Company held in Napa for the purpose of enabling residents of the vicinity to appear, no one whatsoever appeared to complain of the rates or the service of the Napa Valley Electric Company, and that as the Great Western Power Company did not make out its case with reference to the district or territory served by the Napa Valley Electric Company, this Commission denied its application, without prejudice to the right of the Great Western Power Company at any subsequent time to again apply for permission to enter such district or territory. Great Western Power Company has the right at any time to make such application. If Great Western Power Company desires to serve this territory and the inhabitants thereof wish to have the company enter the field, it should be an easy matter for the Great Western Power Company to file an application for permission to enter the territory.

We submit herewith the following form of order:

ORDER.

Phillip Duffy having applied to this Commission for an interpretation of that portion of its order in Case No. 269, Pacific Gas and Electric Company vs. Great Western Power Company, which grants to Great Western Power Company permission to transmit and distribute electrical energy in the city of Napa and in all other sections of Napa County outside of incorporated cities and towns other than the "district now served by the Napa Valley Electric Company," and a public hearing having been held on said application, and this Commission finding as a fact that on June 18, 1912, the southerly limit of the district then served by said Napa Valley Electric Company was as hereinafter indicated,

It is hereby ordered, that the southerly limit of the district on June 18, 1912, served by the Napa Valley Electric Company be declared to be bounded by two lines of which one is an extension of the southerly boundary line of the farm of J. Peres, commencing at the center line of the right of way of the Southern Pacific Company and thence running westerly to the westerly boundary of the Napa Valley, and the other being an extension of the southerly boundary line of the farm now or formerly belonging to Annie Boyee and Johanna Pinchert, and running from said point in the center line of the right of way of the Southern Pacific Company easterly or northeasterly to the easterly boundary of said Napa Valley.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of September, 1912.

DECISION NO. 215.

IN THE MATTER OF THE APPLICATION OF BIG FOUR ELECTRIC RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF ONE HUNDRED THOUSAND SHARES OF CAPITAL STOCK, PAR VALUE ONE HUNDRED THOUSAND DOLLARS.

Application No. 144.

Decided September 10, 1912.

The method of handling and disposing of the stock of applicant, as shown by its contract with the investment company, should be severely criticized by the Commission, and the practice of paying commissions on stock sales, except for actual cash received, should be prohibited in the Commission's order. Salesmen of stock should receive commissions only upon cash sales or as the cash is collected for such sales as may be made for notes. Beginning of construction prohibited until applicant has set aside $50,000 cash proceeds from the sale of stock and other conditions imposed to the issuance of the amount of stock applied for.

Frank A. Daryea, for applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

On July 12, 1912, the Big Four Electric Railway Company, a corporation, filed with this Commission an application for an order authorizing the issuance of 35,000 shares of its capital stock, having the par value of $35,000. The proceeds of the sale of this stock were to be used partly to discharge the present indebtedness of the company and the remainder towards the construction of its proposed line of railroad. One reason given by applicant for desiring to issue this stock was that after such issuance the holders of stock would then be legally qualified to vote upon and authorize the execution of a mortgage and the issuance of bonds thereunder, from the sale of which the company proposed to construct its line of railroad.

The hearing was held at Tulare on August 17, 1912. It appeared at the hearing that the purposes for which the proceeds of the sale of

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35,000 shares of capital stock were to be used were not clearly set out in the application, and further that the issuance of this stock would not permit the applicant to accomplish other purposes desired. The applicant then stated its intention of filing with the Commission an amended application in which the issuance of 100,000 shares of capital stock of the par value of $100,000, would be prayed for, and requested that the evidence and testimony taken on the hearing be considered as applicable to the amended application and that action be taken on the amended application without further hearing. The Commission indicated that this could be done and the hearing proceeded with this understanding.

On August 23, 1912, applicant filed an amended application for an order authorizing the issuance and sale of 100,000 shares of capital stock of the par value of $100,000, the proceeds of sale of which are to be used to pay its present indebtedness and to continue the work of constructing its railroad. The exhibits required by the Commission have been duly filed by applicant, among others, a statement showing its expenditures for "road and equipment," list of subscribers to the capital stock, statement of cash receipts and disbursements, and financial condition, all as of July 31, 1912.

Applicant's articles of incorporation in the office of the Secretary of State, filed on May 18, 1912, show that it proposes to construct a standard gauge railroad to be operated by electricity, gasoline motor, or other lawful motive power from the city of Tulare, Tulare County, California, in an easterly and southeasterly direction, via the towns of Woodville and Poplar, to the city of Porterville; also a branch line from the city of Tulare to the city of Visalia in Tulare County, California. The estimated length of the railroad, including the branch line, is stated in the articles of incorporation to be about thirty-four (34) miles.

The authorized capital stock of applicant is 500,000 shares of the par value of $500,000. The capital stock subscribed as shown by its articles of incorporation is 35,000 shares of the par value of $35,000, of which ten (10) per cent in cash has been paid in to the treasurer.

The maps and profiles filed with the application indicate that when applicant has completed its road, the track mileage will be as follows:

Main line: Tulare to Porterville	30.25 miles
Main line: Tulare to Visalia	11.00 miles
Sidings and spur tracks	3.75 miles
Total mileage all tracks	45.00 miles

The estimated cost of building and equipping the railroad in accordance with plans and specifications attached to the application is $600,000. This amount, however, includes $90,000, "cost of sale of bonds and stock," which deducted from the estimate given above indicates the actual cost of *road in money* would be $510,000.

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A copy of a contract entered into on July 30, 1912, between the Avery Investment Company of San Francisco and applicant was filed which shows that the investment company has the right to sell all stocks and bonds which applicant may issue and receive therefor a commission of fifteen (15) per cent. Unless specially authorized by applicant all stocks and bonds shall be sold at par.

The applicant has filed a statement of expenditures on account of "road and equipment" as of July 31, 1912, which have been vouchered and registered on the books of the company as follows:

1. Engineering	$1,722 80
2. Right of way	110 00
4. Grading	1,481 34
12. Roadway tools	31 35
40. Law expenses	542 75
41. Interest	40 00
44. Commissions on sale of stock	8,490 90
44. Miscellaneous office and general expenses	1,054 80
Total	$13,473 94

In addition to the above, applicant has filed a statement of "unregistered invoices" payable as of July 31, 1912, on account of "road and equipment," aggregating $2,889.57. In addition applicant has borrowed on notes and otherwise $2,500 in cash. The total indebtedness which applicant has incurred up to July 31, 1912, therefore, appears to be $18,863.51.

The receipts of applicant have been as follows:

Cash realized from sale of stock	$4,386 00
Borrowed on notes and otherwise	2,500 00
	$6,886 00
Deduct cash on hand July 31, 1912	691 33
Cash actually disbursed	$6,194 67

The cash disbursements have been for the following purposes, viz:

Account of "Road and Equipment"	$3,781 39
Pay roll advances	10 40
Commissions on sale of stock	2,402 88
Total	$6,194 67

Deducting the amount of cash disbursed, viz, $6,194.67, from the total indebtedness of applicant as stated above, viz, $18,863.51, leaves a balance which applicant is now indebted to various parties of $12,668.84. This indebtedness is made up as follows:

Account of "Road and Equipment," registered invoices	$1,191 25
Account of "Road and Equipment," unregistered invoices	2,889 57
Commissions on sale of stock	6,088 02
Cash borrowed on notes and otherwise	2,500 00
Total	$12,668 84
Deduct cash on hand	691 33
Net present indebtedness	$11,977 51

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The application shows that capital stock has been subscribed and paid for as follows:

In cash	$4,386 00
Notes receivable	25,315 00
Open book accounts	20,905 00
Tidewater and Southern Railway stock	6,000 00
Total stock subscribed	$56,606 00

The applicant shows that under its contract with the Avery Investment Company, the latter has been credited with fifteen (15) per cent of stock subscribed, or $8,490.90, as commissions for the sale of this stock. On July 31, 1912, the account of this investment company stood on the books of applicant, as follows:

Cash paid on commissions	$2,402 88
Amounts due on commissions	6,088 02
Total	$8,490 00

It appears from the above, therefore, that the Avery Investment Company has been credited with fifteen (15) per cent of all capital stock which has been subscribed, regardless of whether such stock was paid for in cash, or notes, or simply held in open account against the subscriber. Also the investment company has been a party to a transaction which is illegal, that is, the exchange of 6,000 shares of capital stock of the applicant for 4,000 shares of capital stock of Tidewater and Southern Railroad Company, and has charged applicant fifteen (15) per cent commission on this transaction. The commissions which have been paid and credited on account of sales of stock by the investment company are unreasonably high. The method of handling and disposing of the stock of applicant as shown by its contract with the investment company should be severely criticized by the Commission, and the practice of paying commissions on stock sales except for actual cash received should be prohibited in the Commission's order. In other words, the salesmen of stock should receive commissions only upon cash sales or as the cash is collected for such sales as may be made for notes.

The statements given above show that of $4,386 in cash received from sales of stock the investment company has received $2,402.88; also, that applicant now owes to the investment company $6,088.02 in cash for stock subscribed upon which nothing has actually been paid. Clearly this develops a practice that is reprehensible and should be forbidden.

The expenditures of applicant so far have resulted in its grading between four (4) and five (5) miles of its proposed railroad between Tulare and Visalia, and also acquiring some equity in franchises and rights of way for about twenty-two (22) miles. The greater part of such rights of way have been donated but certain amounts must be

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paid for portions of same before title will be passed to applicant. It is impossible to estimate the value of the property and rights which applicant has hitherto acquired.

The applicant does not specify the amount which it proposes to realize in cash from the sale of the 100,000 shares of capital stock, the issuance of which is applied for, other than to submit with the application a contract which shows that fifteen (15) per cent commission is to be paid to the Avery Investment Company on all stock sold, whether or not the stock is sold at its par value.

Under the Public Utilities Act this Commission has the power to fix the minimum price at which stock shall be sold. I suggest that the Commission prescribe in its order that no stock shall be sold at a greater discount than twenty (20) per cent, such discount to include all commissions which may be paid and other expenses which may be incurred incident to the advertising and sale of the stock. In other words, that the applicant shall realize from the sale of stock not less than eighty (80) per cent of its par value which amount shall be expended towards the construction and equipment of its railroad. I would further suggest that the Commission provide in its order that no further expenditures shall be made until applicant has received in cash not less than fifty thousand (50,000) dollars from the sale of the 100,000 shares of stock, including the cash already received, and also provide that should applicant be unable to derive fifty thousand (50,000) dollars in cash from the sale of said 100,000 shares of stock, that upon application the Commission will authorize the issuance of additional stock which may be sold. With these proceeds, the applicant shall discharge the indebtedness of the company existing on July 31, 1912, except commissions claimed to be due for sale of stock, aggregating $5,889.49, and also may pay such expenses as have been incurred for building roadbed, salaries of employees and office expenses, provided a verified statement of such expenses has been submitted to and approved by the Commission. After the discharge of the indebtedness outstanding on July 31, 1912, there will remain not less than $39,724.51, which applicant shall use towards paying its expenses for month of August, 1912, and for the construction and equipment of its line of railroad. No commissions are to be paid at any time except upon actual cash received from sales of stock.

Subject to the foregoing conditions, I recommend that the application be granted, and submit the following form of order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Big Four Electric Railway Company for an order authorizing the issuance of 100,000 shares of capital stock of the

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par value of $100,000, the proceeds of the sale of which are to be used in the construction and equipment of its lines of railroad as set forth in the application, and a hearing having been duly held and it appearing to the Commission that the money which will be received from the sale of said stock is reasonably required and necessary for the construction of the railroad and its equipment as provided in the application, and is not properly chargeable to operating expenses or income.

It is hereby ordered that permission be hereby granted to Big Four Electric Railway Company to issue 100,000 shares of capital stock of the par value of $100,000, subject to the following conditions, and not otherwise, to wit:

(1) The stock shall be sold and shall yield to applicant not less than eighty (80) per cent of its par value in cash.

(2) No commissions shall be paid except on cash actually received by applicant from sale of stock, and such commissions shall not exceed twenty (20) per cent of the par value of such stock.

(3) The proceeds from the sale of stock shall be used to discharge the outstanding indebtedness of the applicant which on July 31, 1912, aggregated $5,889.49, not including commissions represented to be due on sales of stock already made. All commissions due on account of sales of stock now appearing on the books of the company shall be cancelled and no commissions shall be considered due on account of such stock as may have already been sold, except such as has been sold for cash or as same may be paid for in cash, and then such commissions as may be paid shall not exceed the amount specified in the contract for such sale. All commissions which have been paid in excess of the agreed percentage of cash actually received shall be returned to the treasurer of applicant.

(4) After the discharge of the indebtedness of $5,889.19, which had accrued against applicant on July 31, 1912, which does not include any commissions for selling stock, no further expenditures shall be made from cash proceeds of sale of stock until all of said 100,000 shares of stock shall have been sold and not less than $50,000 in cash realized from same and placed at the disposal of applicant. Should applicant be unable to derive $50,000 in cash from the sale of said 100,000 shares of stock then upon application the Commission will authorize the issuance of additional stock upon terms similar to those imposed in this order, which applicant may sell. Then applicant shall proceed with the construction of its line of railroad and make such further expenditures as may be necessary in pursuance therewith. No expenditures shall be made, except for the purposes of constructing and equipping the said line of railroad and acquiring the necessary right of way to be used in connection therewith, provided, however, that the applicant

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may pay such indebtedness as it may have incurred during the month of August, 1912, on account of building its line of railroad, including office expenses and salaries of employees, when a verified statement of such indebtedness has been filed with and approved by the Commission.

(5) The applicant shall keep true and accurate accounts showing all receipts and expenditures as provided by the classifications for such accounts which have been adopted by the Commission and on or before the twenty-fifth day of each month shall make a complete verified report to the Commission in accordance with the provisions of the Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

(6) The applicant shall submit for the approval of the Commission the form of all contracts for the sale or exchange of stock, and before their execution any and all contracts for grading, bridging, track, including materials and labor, equipment of all kinds, and all materials, labor, and property involving costs in excess of $500.

(7) The authority hereby given to issue said stock shall apply to stock sold by said company on or before the first day of May, 1913.

It is not to be understood from this order that the Commission will hereafter authorize an issue of bonds on the basis of a valuation of $50,000 alone; before an issue of bonds will be approved by the Commission, it will be necessary for additional funds to be realized either from further stock sales or from other sources.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of September, 1912.

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DECISION NO. 216.

IN THE MATTER OF THE APPLICATION OF VALLEJO AND NORTHERN RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE IN "M" STREET AND ACROSS SECOND, THIRD, FOURTH, FIFTH, SIXTH AND SEVENTH STREETS, CITY OF SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA; ALSO TO CROSS AT GRADE TRACKS OF PACIFIC GAS AND ELECTRIC COMPANY AT THE INTERSECTION OF "M" STREET WITH THIRD STREET AND SEVENTH STREET IN SAID CITY OF SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA.

Application No. 214.

Decided September 10, 1912.

REPORT OF THE COMMISSION.

Vallejo and Northern Railroad Company, a corporation, having on September 4, 1912, filed with the Commission its application for permission to construct its main line track at grade on "M" street and across Second, Third, Fourth, Fifth, Sixth and Seventh streets, city of Sacramento, Sacramento County, California, and also across the tracks of the Pacific Gas and Electric Company at the intersection of "M" street with Third and Seventh streets of said city of Sacramento, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Vallejo and Northern Railroad Company has secured the necessary permit or franchise from the city of Sacramento to construct its track at grade on "M" street of said city; that it has entered into an agreement with Pacific Gas and Electric Company, as shown by contract of September 26, 1911, for the construction of grade crossings with tracks of said company at the intersection of "M" street with Third and Seventh streets of said city; and it further appearing that it is not reasonable nor practicable to avoid grade crossings at the proposed points of crossing with said public streets of the city of Sacramento and also with the tracks of the Pacific Gas and Electric Company, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to Vallejo and Northern Railroad Company to construct its main line track at grade on "M" street in the city of Sacramento, Sacramento County, California, crossing Second, Third, Fourth, Fifth, Sixth and Seventh streets

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of said city; also to cross the tracks of Pacific Gas and Electric Company at the intersection of "M" street with Third and Seventh streets of said city, all as shown by the map and profile attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing the track across the street crossings above named and the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by Vallejo and Northern Railroad Company.

(2) Said company shall also bear the entire expense of constructing, placing and maintaining hereafter crossing frogs at intersections with the tracks of Pacific Gas and Electric Company.

(3) All trains and cars of both Vallejo and Northern Railroad Company and Pacific Gas and Electric Company before passing over the railroad crossings shall come to a full stop, and shall proceed over the crossings only after they have been examined by the conductor or other trainman and ascertained to be safe.

(4) The street crossings shall be provided with the necessary plank or guardrail, and ballasted with first-class stone or gravel ballast, and otherwise made safe for the passage of vehicles. The construction of track over the crossings shall also be subject to provisions of the ordinances granted the Vallejo and Northern Railroad Company by the city of Sacramento, and also to such further ordinances as the city may pass concerning them.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of September, 1912.

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DECISION NO. 217.

IN THE MATTER OF THE APPLICATION OF NEW RICHMOND LAND COMPANY FOR PERMISSION TO OPEN A STREET OR PUBLIC HIGHWAY ACROSS A SPUR TRACK OF SOUTHERN PACIFIC RAILROAD COMPANY NEAR THE INTERSECTION OF FILBERT STREET WITH VERNON AVENUE, CITY OF RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 215.

Decided September 10, 1912.

REPORT OF THE COMMISSION.

New Richmond Land Company, a corporation, having on September 6, 1912, filed with the Commission its application for permission to construct a public street or highway at grade across a spur track of Southern Pacific Company as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific Company, lessee of Southern Pacific Railroad Company owners of said spur track, agrees to said crossing at grade; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said spur track, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted New Richmond Land Company to construct a street or public highway across the spur track of Southern Pacific Railroad Company in the city of Richmond, Contra Costa County, California, near the north line of said city and also near the intersection of Vernon avenue with Filbert street, as shown by the map and profile attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, including the necessary culverts on each side of the railroad, shall be borne by New Richmond Land Company. The expense of maintenance hereafter of the crossing, including the culverts, shall be borne by this company up to the end of ties. The expense of maintaining the crossing between the end of ties and over the track shall be borne by Southern Pacific Railroad Company.

(2) The crossing shall be of a width not less than twenty-four (24) feet and the grades of approach shall not exceed three (3) per cent. The crossing shall be ballasted with gravel or broken stone ballast, and

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shall in every way be made safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of September, 1912.

DECISION NO. 218.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY TO SELL AND LEASE AND THE CITY OF SAN DIEGO TO PURCHASE AND LEASE PROPERTY OF THE SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY.

Application No. 169.

Decided September 12, 1912.

Applicant asks for the Commission's approval of the proposed sale of a portion, and the lease of substantially all of the remainder of its property to the city of San Diego upon the approval by the voters of said city of an issue of bonds wherewith to pay for said property.

Held, That, from the standpoint of law, the sale or lease of its property by a public utility to a municipality is no different from the sale or lease by one public utility to another, but that there is a distinct difference in the practical aspect in that, as a result of the transfer, the utility and its patrons become practically synonymous. Hence, it becomes necessary to determine whether or not a transfer and lease of this property to the city will in any wise impair the rights of users in the system taking their service outside the city limits.

Held, That a transfer of property used in a public service carries with it the obligations owed to consumers to continue the use to which the property has been devoted.

Held, That the city is legally able to take the property, and in doing so will become the successor of the public utility corporation in the duty to perform obligations imposed by law, and, consequently, the taxing and bond limits of its charter have no application to funds necessary to perform such obligations.

H. E. Doolittle, for Southern California Mountain Water Company.
W. R. Andrews, for City of San Diego.
Tyndale Palmer, for Otay Water League.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner:*

On July 29, 1912, the Southern California Mountain Water Company filed its application asking the approval by this Commission of

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its contemplated sale of a portion, and lease of practically all of the remainder of its property to the city of San Diego, under the terms of a certain agreement between said company and the city of San Diego, contingent upon the approval by the voters of San Diego of an issue of bonds wherewith to pay for said property. The city of San Diego joins in the application. The proposition for the issue of $2,500,000 of 4½ per cent bonds, to cover the purchase price of the property of this company involved in the contemplated sale, was submitted by ordinance number 4786 of the city of San Diego at a special election held on August 15, 1912, at which election by a vote of sixty-nine hundred and fifty (6950) for and fourteen hundred and four (1404) against the bond issue was authorized and the purchase approved.

The agreement of sale covers the following property:

The Barrett dam site and reservoir site, consisting of nine hundred and thirty-six acres of land, together with eight hundred and twenty-four acres in addition thereto, adjoining and adjacent to the same, with buildings and construction plant, including all lands in the Barrett reservoir site to the one hundred and seventy-five foot contour line above the bed of the stream of the said Barrett dam site;

All the water rights on the Pine Creek, and all the lands and riparian rights of the Southern California Mountain Water Company along Pine Creek and the Cottonwood Creek from the Dulzura conduit intakes to the international boundary line between the United States and Mexico;

The Dulzura conduit running from and including the diverting intakes at the Pine and Cottonwood creeks to the Dulzura Divide, said divide being near the center of section ten, township eighteen south, range two east, San Bernardino meridian, with all the lands and rights of way owned by the Southern California Mountain Water Company along the same;

All flowage rights, riparian rights, rights of way and lands of the Southern California Mountain Water Company along the Dulzura and Jamul creeks from the western end of the Dulzura conduit, as above described, to the lower Otay reservoir;

The upper Otay dam and reservoir, consisting of one hundred and sixty-four acres of land, together with the lands adjoining, appurtenant and adjacent thereto, consisting of four hundred and fifty and sixty-four hundredths acres, subject to the shooting and fishing privileges of E. S. Babcock;

The lower Otay dam and reservoir, consisting of one thousand acres of land, and the lands owned by the Southern California Mountain

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Water Company adjoining, appurtenant and adjacent to the same, consisting of one thousand four hundred and twenty-one and eighteen hundredths acres, including all buildings, gardens, orchards and improvements thereon:

The pipe system, and rights of way therefor, from the lower Otay dam and reservoir to the University Heights reservoir in the city of San Diego, California, with pipe walkers' houses along the same;

The Chollas Heights reservoir, consisting of fifteen and seventy-three hundredths acres, together with the lands adjoining and adjacent thereto, consisting of one hundred and sixty-four and twenty-seven hundredths acres; and also the water filtering plant with the land adjoining and adjacent thereto consisting of five acres.

Said property to be so acquired by the said city of San Diego to be subject to the water rights of the Southern California Mountain Water Company on the Cottonwood Creek east of the Barrett reservoir site, and to all of the property rights of the said Southern California Mountain Water Company to lands lying east of the east line of the Barrett reservoir site, including the right of the said Southern California Mountain Water Company to complete and maintain the Morena dam, and to catch, impound and store water in the Morena reservoir, and to take, draw and divert water therefrom and to sell and deliver the same for domestic, irrigation and other purposes outside of and beyond the watershed of the Morena reservoir, subject to the rights of the said city of San Diego to lease and purchase the same.

The proposed lease is to run for ten years with an annual payment thereunder of $67,500, and by its provisions the entire control of the property is given over to the city and the entire cost of maintenance and operation is likewise to be borne by the city. At any time before the expiration of the lease the city is given an option to purchase all of the property covered thereby for $1,500,000.

The lease applies to the following property of the company:

All its water rights in the stream of the Cottonwood Creek above and east of the Barrett reservoir site; also the Morena reservoir and Morena dam, and the water impounded therein, together with the right to catch, store and impound water therein; and to take, use and draw from the said Morena reservoir and Morena dam, all water which may flow into, or become impounded in, or flow through, said Morena reservoir and Morena dam, together with the right to use the natural bed of the Cottonwood Creek, as an aqueduct, from said Morena dam to the east line of said Barrett reservoir site, at any time within ten years from the date of said lease.

The conveyance of the property is made subject by express terms

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to certain preëxisting and admitted obligations on the part of the Southern California Mountain Water Company. The agreement of June 5th, 1912, recites these as follows:

> "Said property to be sold and conveyed by the said party of the first part to the said party of the second part, subject to all pre-existing contracts heretofore made by, and under which the Southern California Mountain Water Company is now furnishing water for domestic and irrigation purposes, which contracts are more particularly described in that certain schedule attached to, marked 'Exhibit B' and made a part of said 'Document No. 47806,' filed in the office of the city clerk of said city of San Diego, on the 14th day of February, 1912, and also subject to that certain contract between the Southern California Mountain Water Company and the San Diego Land Company, dated on the 11th day of April, 1912, and filed in the office of the county recorder of the county of San Diego, California, ——— and also including a contract between the Southern California Mountain Water Company and the Coronado Water Company, for the use of water for domestic and irrigation purposes upon the peninsula of San Diego, as per grant thereof, known as North Island, city of Coronado, Tent City, the Brick Yards and Coronado Heights, and other consumers which are limited to the amount of water now being delivered to those who have connections with and are now being furnished with water from the Coronado pipe line, which pipe line commences on the Otay-San Diego pipe line at the Coronado Junction, about two and three fourths miles below the lower Otay outlet, and follows along the sand spit around the bay of San Diego, into the city of Coronado, the price for such water to be eight cents per thousand gallons for the period of ten years from the date of contract and thereafter upon such rate as the parties may agree upon, or, if unable to agree upon such rate, then such rate to be fixed by arbitration, one party selecting one arbitrator, and the other party selecting the second arbitrator, and if the two arbitrators, so chosen, are unable to agree, they shall select a third arbitrator, whose decision shall be final, or at such rate as shall be fixed by lawful authority in existence at that time."

I find no reference to assumption by the city, as lessee, of any obligations in the leased premises. I consider these assumptions of obligations of small importance, however, except as declarations, for reasons which I shall hereafter state.

The net result of the sale and lease is to give the city of San Diego control for ten years of the entire system of the Southern California Mountain Water Company subject to certain obligations of said company specifically set out. In passing it is well to note that the

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Coronado pipe line from Coronado Junction on the Otay–San Diego pipe line to Coronado is covered neither by the proposed sale or lease, nor does it appear in whom its ownership rests. It appears, however, from the contract of the Southern California Mountain Water Company with the Coronado Water Company, as well as the contracts with various consumers in the neighborhood of Nestor, that this line belongs to the Southern California Mountain Water Company, and I shall assume such ownership to exist for the purposes of this opinion and order.

The effect of the consummation of the sale and lease of the property is to leave the Southern California Mountain Water Company for the next ten years possessed of a few miles of pipe from Coronado Junction to the beginning of the system of the Coronado Water Company and divested of the control of the remainder of its property. The city of San Diego is in law and by contract bound to assume the lawful burdens upon the system, but in no place is the city granted in terms the right to the use of the Coronado pipe line, nor has imposed upon it the duty of maintaining it. It will be required to continue the service under its assumption of obligation to users connected with this line. Such being the case it should be substituted to the owner, in the control of all of the facilities necessary to such delivery. I assume the utmost good faith on the part of the company and the city in this transaction, but I can readily see chances for legal complications affecting the rights of present users on this part of the system, and particularly of others if they exist who may hereafter be found to have rights in the Otay Valley. (*Hildreth* vs. *Montecito Creek W. Co.*, 139 Cal. 23.) I specifically disclaim any expression of opinion on the questions of law and fact involved in Case 261, but it will readily appear that if an approval of this sale and lease shall in any respect affect the status of the complainants therein, that a decision in this case should be reserved until the issues in that case have been determined. I do not feel this to be necessary if conditions shall be imposed having the effect to maintain the status of the parties until Case 261 is disposed of.

It is my view that somewhat different considerations should guide this Commission in determining the questions involved in a sale or lease by a utility to a municipality than ordinarily prevail. The design of section 51*a* of the Public Utilities Act is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates, or upon terms which will bring about the same undesirable result. Transfers and reorganizations

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often are made which leave the utility so burdened with fixed interest charged and crippled financially that it is totally unable longer to perform its duty to the public, and to prevent the bringing about of such conditions the Railroad Commission has been given the authority to regulate the transfer and encumbrance of its property by a utility. While the jurisdiction of the Commission is over the utility then in ownership and which desires to sell or encumber its property, yet from the very reason underlying the conferring of this power upon the public authority it becomes necessary when a sale or lease is contemplated which will bring about the substitution for the existing agency of another agency to be in charge of the public service, that a careful investigation into both the terms of the transfer and the ability of the new agency to perform be made. Hence, we have required by our rules that both parties to the transaction shall submit their affairs to the scrutiny of the Commission. I do not agree with the contention that because the city has the power to buy that it may purchase at its pleasure the property of a utility. The city is in no better condition in this regard than a private individual or a corporation. A private individual has the power to purchase anything purchasable. A private corporation has the power to purchase anything purchasable permitted by its articles of incorporation. A city has only the power to purchase those things which are specifically permitted in the constitution of the state and its charter provisions. The power of the city, in short, to purchase is more limited than the power either of an individual or a private corporation. The power to purchase does not necessarily imply the existence of something which may be purchased. There may be physical or legal bars to the exercise of any right which either a city, a corporation, or an individual may possess as a matter of general power. It could not be said that if there were no water company in existence with waterworks to sell that the power of the city of San Diego to purchase would avail it much; neither would its power to purchase be worth much if, even though a water company existed with works suitable to its needs, the water company would not take the legal steps to put itself in a position to sell. To be sure, resort to eminent domain might be had, but that is a question which of course is not involved in this proceeding. Admittedly a quasi-public corporation such as the Southern California Mountain Water Company cannot without legislative authority alienate its property impressed with a public use. Before the passage of the Public Utilities Act such legislative permission was conferred by section 361*a* of the Civil Code (*South Pasadena* vs. *Pasadena Land Co.*, 152 Cal. 579–584). The enactment of the Public Utilities Act, however, not only revoked such permission,

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but specifically in section 51*a* prescribed the permission of the Railroad Commission as a prerequisite to such sale. In its legal aspect there can be no doubt that the permission of this Commission is one of the prerequisites to a valid sale or lease of its property by a public utility, and the attempted sale or lease by the Southern California Mountain Water Company of its property to the city of San Diego without the permission of this Commission would pass no title to the city of San Diego and would give it no property rights in said system.

I am, therefore, of the opinion that from the standpoint of law a sale or lease of its property by a public utility to a municipality is no different from the sale or lease by one public utility to another. In its practical aspect, however, as I have already said, there is a distinct difference. The Commission's duty is to protect the patrons of a public utility and insure the continuance of adequate service at reasonable rates regardless of ownership. When a city purchases or leases the property of a water company, in operation of such property it of course steps outside its governmental aspect and assumes the aspect of a proprietor (*Davoust* vs. *Alameda,* 149 Cal. 69), but after all a proprietor of which the individual consumers within the city are the component parts. In other words, the utility and its patrons become practically synonymous. Through their agents the residents of the city of San Diego will operate and maintain this utility, and as these agents are directly responsible to the consumers, or by far to the greater proportion thereof, the distribution of water becomes practically a mutual affair, and I do not believe the State is vitally concerned in the method in which such public service is carried on. But this condition exists only as to the limits of the city. Cities, the same as individuals, may not use their property to the hurt of those without their gates. To all patrons of the Southern California Mountain Water Company, if there be any, who receive service outside the limits of the municipality of San Diego, this Commission owes exactly the same duty as it would were the transfer made to an individual or private corporation. Hence it becomes necessary to determine whether or not a transfer and lease of this property to the city of San Diego will in anywise impair the rights of users in the system taking their service outside the city limits.

A considerable amount of testimony was introduced touching the city's ability to carry out the obligations existing against this system without the limits of the city. I do not intend to go into this in detail because I am clearly of the opinion that the city of San Diego with all of its resources is at least as financially responsible to those served from this system outside its limits as could any private owner be.

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Moreover, the limit of liability which may be incurred by a municipality under charter or statutory regulations has no reference whatsoever to involuntary obligations. A bond or tax limit only prevents the voluntary assumption on the part of a municipality of obligations beyond such limit. Obligations imposed by law are not subject to such limitations. The Supreme Court of this State makes the following clear statement with reference to this question:

> "We are clear that the provision refers only to the acts or contracts of the city, and not to liabilities which the law may cast upon her. It was intended to restrain extravagant expenditures of the public moneys; not to justify the detention of the property of her citizens which she may have unlawfully obtained. The plaintiff claims that the city has got his money without any consideration—by mistake—and has appropriated it to municipal purposes, and he insists that she is responsible to him for it, because the law—not her contract of permission—renders her liable. Her liability, in this respect, is independent of the restraining clauses of the charter; it arises from the obligation to do justice—to restore what belongs to others—which rests upon all persons, whether natural or artificial. And it may well be doubted whether it would be competent for the Legislature to exempt the city, any more than private individuals, from liability under circumstances of this character."
>
> *McCracken* vs. *City of San Francisco,* 16 Cal. 631.

See, also, *Holland* vs. *San Francisco,* 7 Cal. 387;
Larence vs. *Bean,* 18 Wash. 36; 50 Pac. 582;
Fort Dodge Electric L. and P. Co. vs. *City,* 89 N. W. 7;
City of Bloomington vs. *Perdue,* 99 Ill. 329;
City of Chicago vs. *Sexton,* 115 Ill. 230;
Cyc., vol. 28, p. 1541.

That the city does not incur, by contract, the responsibility for performing the obligation owed to the public by the Water Company seems clear. One may not assign the burden of an obligation without the consent of the one to whom obligated. Certainly the Southern California Mountain Water Company could not divest itself of any duty it owes to the public by the mere transfer of its property to an agency legally incapable of performing such duty. The city in no wise under my view of the law occupies contractual relations in the ordinary sense with its consumers, and neither does the Southern California Mountain Water Company. To such an extent is this true, that the courts uniformly enforce such rights as these consumers have by mandamus:

Mahoney vs. *American Land Co.,* 2 Cal. App. 185;
Merrill vs. *Southside Co.,* 112 Cal. 426;
McCrary vs. *Beaudry,* 67 Cal. 120;
Price vs. *Riverside Land Co.,* 56 Cal. 431.

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And it is elementary that mandamus does not lie to enforce an obligation arising out of contract alone. (C. C. P., secs. 1085-1086.) It is the public nature of the obligation and the trust relationship brought about by operation of law that makes the remedy by mandamus available.

The fact that the city contracts voluntarily with the Southern California Mountain Water Company for the purchase of its works, knowing these works have some burdens upon them, does not carry its contract to which alone the limit on bonded indebtedness applies beyond the purchase price of these works. All obligations to consumers are obligations imposed by law upon the property in the hands of any owners whatsoever.

The city by the constitution (art. 19, sec. 11) is empowered to purchase existing works of public utilities and this power has been held to include the power to continue the service of such utility (*South Pasadena* vs. *Pasadena Land Co.,* 152 Cal. p. 590). Furthermore, having been granted this power it must have granted the incidental power to accept the property and continue the use to which it is devoted for, "It is settled law that a transfer of property used in a public service from one corporation to another, although made by a corporation having power to convey, is invalid unless the transferee has the power to accept the property and continue the use to which it has been devoted."

> *South Pasadena* vs. *Pasadena Land Co.,* 152 Cal. at p. 588;
> *Central Transportation Co.* vs. *Pullman,* 139 U. S. 48.

I, therefore, am clearly of the opinion that the city has the power to take this property burdened with these obligations, and that any expenditures made necessary by the duty owed to consumers on the system is an obligation imposed by operation of law, and as such may be met by the city even though by so doing the limit of indebtedness or taxation be exceeded.

While the city may assume these obligations and is not prevented from so doing by its debt or taxation limit, it still remains to be determined whether or not it *must* do so. The decisions already referred to seem to me to be conclusive on this point, but the direct issue has been raised and passed upon in two well considered cases by our Supreme Court, to one of which reference has already been made. The *South Pasadena* case, *supra,* was in all respects similar to the one we are here considering and there the Court said:

> "The two cities (Pasadena and South Pasadena) would not be of equal authority with respect to the use of water in South Pasadena in such case. South Pasadena would have the power above stated

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under the constitution and Pasadena so far as that service is concerned would be subject to those powers to the same extent as the Pasadena Land and Water Company is now subject thereto. In the carrying on of the water service to the city of South Pasadena the city of Pasadena will not be acting in its political, public, or governmental capacity as an agent of the sovereign power equal in all respects to the city within which it operates. In administering a public utility such as a water company, even within its own limits, a city does not act in a governmental capacity but in a proprietary and only quasi-public capacity. Having taken over the whole system subject to the burden of supplying a part of the water to inhabitants of South Pasadena, the city of Pasadena will have no greater rights or powers respecting that part of the service than its grantor previously had. It will be under the same obligation as its grantor to continue the service and supply the water to all persons who may become entitled to it in the future so long as it retains possession and control of the property so charged."

It is also pointed out in this case that service to rural communities is subject to the same rule.

See, also, *Fellows* vs. *Los Angeles,* 151 Cal. 52;
Hewitt vs. *San Jacinto Irr. Dist.,* 124 Cal. 186.

The following conclusions, therefore, seem to me to be justified:

1. The city is legally able to take this system and perform all the obligations owed to the public by its predecessor in title, the Southern California Mountain Water Company, by reason of the provisions of section 19 of article 11 of the constitution in the light of the construction put upon a similar power held by a municipality, by the Supreme Court.

2. The city as purchaser will not occupy contractual relations to the consumers from this system, but is merely the successor of the Southern California Mountain Water Company in the duty to perform obligations imposed by law, and consequently the tax and bond limits of its charter have no application to funds necessary to perform these obligations.

3. The city as successor of the Southern California Mountain Water Company is bound to perform every obligation that the Southern California Mountain Water Company can be forced to perform.

4. The assent of this Commission is as essential to a sale or lease by a utility to a municipality as to any other purchaser or lessee. Public utilities may not sell their property even in the absence of statute without consent of the State. (*Visalia Gas Co.* vs. *Sims,* 104 Cal. 326, and cases there cited.) The form of assent is provided in the Public Utilities Act. A municipality not only has no more power

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to purchase than other agencies, but is limited strictly in this regard to the power granted by the State, and the State has granted municipalities no power to purchase from agencies incapacitated to sell.

I believe this sale should be made but certain conditions should be imposed which I will now discuss. Reference has been made to the peculiar status of the Coronado pipe line. In connection therewith *Hildreth* vs. *Montecito* was referred to as having application. In pleading in water cases involving a controversy over delivery it is always necessary to allege a supply of water in the hands of the distributing agency and likewise a system with which to deliver. In commenting on this question of pleading the Court there says: "For all that appears in the complaint some other person may at all times have been the owner and in control of the water using defendant's waterworks as a means and defendant as the agent for distribution." (139 Cal. p. 27.) I have in mind the possibility that in a suit against the Southern California Mountain Water Company for delivery of water to consumers on the Coronado pipe line that company could urge the impossibility of delivery because it has no water, and in a suit against the city of San Diego it might interpose the defense that it has no pipe line. I do not desire to be understood as believing these consumers could be defeated of any right by such defenses, but I do see the possibility of complications which may easily be avoided by a condition which I shall submit in the order.

Although it is so clear that the city will take this property subject to any obligations which attach to it in the hands of its present owners, still as an additional safeguard a further condition should be imposed in this regard. This can certainly not be objectionable from the standpoint of either the present owner or the city, since their respective counsel contend for the construction of the law on this point which is followed herein.

I, therefore, find that the public convenience and necessity will be served by the sale to the city of San Diego of the property of the Southern California Mountain Water Company described herein, and the lease to the city of San Diego of the additional property of said company, likewise described herein, on the terms and conditions of sale and lease heretofore set out except as modified by conditions imposed in the order of this Commission herewith included, but contingent solely upon the performance by the said Southern California Mountain Water Company and the said city of San Diego of the conditions set out in the order following respectively to be performed.

I submit the following order:

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ORDER.

Southern California Mountain Water Company, a corporation, organized under and by virtue of the laws of the State of California for the purposes among others of selling, renting, and distributing water to the public within certain specified territory within the county of San Diego, State of California, and actually engaged within said county of San Diego in selling appropriated water to municipalities and individuals within the territory of the intended use of said appropriated waters as set out in its notices of appropriation, hereinafter referred to as the company, having filed its application with this Commission to sell to the city of San Diego, a municipal corporation organized and existing under and by virtue of the laws of the State of California and situated within the county of San Diego, hereinafter referred to as the city, the following described property:

The Barrett dam site and reservoir site, consisting of nine hundred and thirty-six acres of land, together with eight hundred and twenty-four acres in addition thereto, adjoining and adjacent to the same, with buildings and construction plant, including all lands in the Barrett reservoir site to the one hundred and seventy-five foot contour line above the bed of the stream of the said Barrett dam site;

All the water rights on the Pine Creek, and all the lands and riparian rights of the Southern California Mountain Water Company along Pine Creek and the Cottonwood Creek from the Dulzura conduit intakes to the international boundary line between the United States and Mexico;

The Dulzura conduit running from and including the diverting intakes at the Pine and Cottonwood creeks to the Dulzura Divide, said divide being near the center of section ten, township eighteen south, range two east, San Bernardino meridian, with all the lands and rights of way owned by the Southern California Mountain Water Company along the same;

All flowage rights, riparian rights, rights of way and lands of the Southern California Mountain Water Company along the Dulzura and Jamul creeks from the western end of the Dulzura conduit, as above described, to the lower Otay reservoir;

The upper Otay dam and reservoir, consisting of one hundred and sixty-four acres of land, together with the lands adjoining, appurtenant and adjacent thereto, consisting of four hundred and fifty and sixty-four hundredths acres, subject to the shooting and fishing privileges of E. S. Babcock;

The lower Otay dam and reservoir, consisting of one thousand acres of land, and the lands owned by the Southern California Mountain

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Water Company adjoining, appurtenant and adjacent to the same, consisting of one thousand four hundred and twenty-one and eighteen hundredths acres, including all buildings, gardens, orchards and improvements thereon;

The pipe system, and rights of way therefor, from the lower Otay dam and reservoir to the University Heights reservoir in the city of San Diego, California, with pipe walkers' houses along the same;

The Chollas Heights reservoir, consisting of fifteen and seventy-three hundredths acres, together with the lands adjoining and adjacent thereto, consisting of one hundred and sixty-four and twenty-seven hundredths acres; and also the water filtering plant with the land adjoining and adjacent thereto consisting of five acres.

Said property to be so acquired by the said city of San Diego to be subject to the water rights of the Southern California Mountain Water Company on the Cottonwood Creek east of the Barrett reservoir site, and to all of the property rights of the said Southern California Mountain Water Company to lands lying east of the east line of the Barrett reservoir site, including the right of the said Southern California Mountain Water Company to complete and maintain the Morena dam, and to catch, impound and store water in the Morena reservoir, and to take, draw, and divert water therefrom and to sell and deliver the same for domestic, irrigation and other purposes outside of and beyond the watershed of the Morena reservoir, subject to the rights of the said city of San Diego to lease and purchase the same.

And said company likewise having made application to lease to said city the following described property:

All its water rights in the stream of the Cottonwood Creek above and east of the Barrett reservoir site; also the Morena reservoir and Morena dam, and the water impounded therein, together with the right to catch, store and impound water therein; and to take, use and draw from the said Morena reservoir and Morena dam, all water which may flow into, or become impounded in, or flow through, said Morena reservoir and Morena dam, together with the right to use the natural bed of the Cottonwood Creek, as an aqueduct, from said Morena dam to the east line of said Barrett reservoir site, at any time within ten years from the date of said lease.

And said company and said city by its mayor and common council having on the 5th day of June, 1912, entered into an agreement for the sale and lease of said property by said company to said city on the following terms: Said property covered by contract of sale to be purchased for $2,500,000 in lawful money of the United States or bonds of said city of like amount, bearing interest at 4½ per cent per annum, payable semiannually, one fortieth of said issue, or $62,500, maturing

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and payable annually. Said property covered by the lease to be leased for $67,500 per annum, payable in twelve monthly installments of $5,625, for a term of ten years, the city to have an option to purchase said leased property at any time during said term for $1,500,000. Said contract being filed with the application herein is referred to for further particulars.

And the electors of said city having on the 15th day of August, 1912, at a regularly called election for said purpose, duly ratified said sale and voted bonds in the sum of $2,500,000 on the terms set out in said contract between said company and city, heretofore referred to.

And the city having subsequent to said election joined in the application of the company for the sale and lease on the terms and conditions hereinbefore set out, and a hearing having been duly and regularly had on such application and being fully advised in the premises,

The Commission finds as a fact that the sale and lease aforesaid, if approved by this Commission on the terms of said contract of June 5, 1912, will serve to vest the control of the entire property of the company used and useful for the public uses to which it is dedicated in the said city, except that certain pipe line leading off from the main pipe line of the company between the lower Otay reservoir and the Chollas Heights reservoir, at a point called Coronado Junction and joining the system of Coronado Water Company at a point about 3,500 feet west of the Highland reservoir, said pipe being used to convey water to the city of Coronado and being necessary for said purpose, as well as to convey water to certain present users from the system of the company, and likewise necessary to convey water to any other consumers if any there be who may hereafter receive water along the line of said pipe line between the points mentioned.

And the Commission further finds as a fact that the control of said pipe line by the said city will be necessary and useful in the performance by it of the duties which are now owed to the users along said Coronado pipe line under its admitted assumption of obligations under the terms of the contract of June 5, 1912, between said company and said city, if said sale and lease by the company to the said city be approved by this Commission.

And the Commission further finds as a fact that if the company and the city shall have each complied with all of the conditions precedent hereinafter in this order specified to be severally complied with by said company and said city respectively, then, but not otherwise, the present and future public convenience and necessity require and will require:

1. The granting of the application of the company to sell and the city to buy all the property covered by the agreement of sale of June 5, 1912, under the terms and conditions set out herein and in said agreement, subject to the conditions hereinafter stated.

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2. The granting of the application of the company to lease and the city to take under said lease all the property covered by the agreement of lease of June 5, 1912, under the terms and conditions set out herein and in said agreement, subject to the conditions hereinafter stated.

Basing its conclusions on the foregoing findings of fact and on the further statements and findings which occur in the opinion which precedes this order,

It is hereby ordered as follows:

1. Subject to the express conditions precedent hereinafter specified, permission is granted to the company to sell and the city to purchase all the property covered by the agreement of sale of June 5, 1912, between said company and said city on the terms and conditions set out herein and in said agreement except as modified by said conditions precedent.

2. Subject to the express conditions precedent hereinafter specified, permission is granted to the company to lease and the city to take by lease all the property covered by the agreement of lease of June 5, 1912, between said company and said city as set out herein and said agreement, except as modified by said conditions precedent.

3. Each portion of this order is subject to the following express conditions precedent:

(*a*) The agreement of lease of June 5, 1912, shall be so modified that the city shall be granted at all times control of both the operation and maintenance of all of the so-called Coronado pipe line owned by the company from its junction with the main pipe line of the company between the lower Otay reservoir and the Chollas Heights reservoir, to the point of junction with the system owned by the Coronado Water Company, during the life of said lease. If hereafter said city shall exercise its option to purchase under said agreement then said option to purchase shall be exercised contingent upon an arrangement being entered into between said company and said city whereby at all times the city shall have such use of said Coronado pipe line as is necessary and convenient in performing any duty to the public owed by the company and assumed by the city either by express assumption or by operation of law. If said lease is terminated by any cause other than the purchase by the city, then in that event the city shall for a reasonable rental permit the use of its facilities from the Barrett dam site to the junction of the Coronado pipe line to the extent that is necessary for the conveyance from the leased system of the company to the head of the Coronado pipe line of sufficient water to furnish all lawful demands from said pipe line; or at its option the city may furnish such lawful demands from its own supply into the said Coronado pipe line.

The intent of this condition is to insure under all conditions of owner-

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ship the supplying of all lawful demands upon the Coronado pipe line. While in the absence of other arrangements between the company and the city which will in the opinion of the Commission bring about the same result, this condition will be strictly adhered to and enforced, still on an agreement between the company and the city being presented different in terms herefrom but equally or better adapted in the opinion of this Commission to bring about the desired result, an order will be entered modifying this condition in accordance therewith.

(*b*) A stipulation shall be filed in this case by resolution of the common council of the city, approved by the mayor and city attorney, counsel herein, to the effect that the city takes the property of the company, understanding that any legal claim for water which may be enforced against the company may likewise be enforced against the city. The intent of this condition is, that the city shall not raise in any proceeding the point that the mere fact of this transfer has served to change the legal status of the property with reference to its public duties and charges. This stipulation not in any wise morally or legally to bind the city against contesting any claim against the system except on the one ground stated, namely that the fact of transfer affects the status of the property to such a degree that valid claims against the system in the hands of the company become invalid by reason of the transfer to the city.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of September, 1912.

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DECISION No. 219.

IN THE MATTER OF THE APPLICATION OF SANTA ROSA WATER WORKS FOR AN ORDER AUTHORIZING IT TO EXECUTE PROMISSORY NOTES IN THE AMOUNT OF FORTY-EIGHT THOUSAND DOLLARS AND TO EXECUTE ITS DEED OF TRUST TO SECURE THE PAYMENT OF THE SAME.

Application No. 197.

Decided September 12, 1912.

In view of the showing as to net gain and of the other facts set forth, *Held*, there is no reasonable doubt of applicant's ability to meet the interest payments on the notes now proposed to be issued and to set aside a sinking fund for their redemption.

L. W. Juilliard, for applicant.

REPORT OF THE COMMISSION.

THIELEN, *Commissioner.*

Santa Rosa Water Works applies for an order of this Commission authorizing it to execute promissory notes in the aggregate amount of $48,000 and to execute its deed of trust to secure the payment of the same, as will appear hereinafter in greater detail.

Applicant supplies water to a portion of the city of Santa Rosa and to a territory adjacent thereto within a radius of about one mile. Its system is a gravity system and its water is secured from the Alamos and Santa Rosa creeks. Applicant's diverting dam is located about five miles east of Santa Rosa at the confluence of these two creeks, and its reservoir is located about two and one half miles east of the city. Applicant also pumps water into the reservoir from a spring located about one mile from the reservoir. The reservoir has a capacity of about two hundred and fifty million gallons. Applicant would increase the amount of water now developed by increasing the size of its diverting dam and reservoir, so as to conserve winter waters which now go to waste. Within the city of Santa Rosa applicant is in competition with a municipality owned water plant. The city secures its water by pumping from wells located in a flat basin some one to one and one half miles distant and supplies water to its inhabitants in the amount of ten thousand gallons per month free, with a charge for water consumed in excess of this amount. The city has at least twice as many consumers as applicant has within the city limits, but applicant supplies most of the heavy consumers within the city and has the rapidly growing

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outside territory to itself. Applicant claims that the city cannot readily develop more water, and that after a period of severe competition with the municipally owned plant, applicant's position has become stable and its credit improved to the extent that it can now borrow money for six per cent instead of seven or eight, as heretofore.

Applicant was incorporated on February 27, 1873, with an authorized capital stock of one hundred thousand ($100,000) dollars, divided into one thousand (1,000) shares of the par value of one hundred ($100) dollars each, of which amount thirty-five thousand ($35,000) dollars was subscribed at the time of incorporation. In 1878 the amount of authorized capital stock was increased to two hundred and fifty thousand ($250,000) dollars, divided into two thousand five hundred (2,500) shares of the par value of one hundred ($100) dollars each. The stockholders at the time of the increased authorization turned their certificates back to the company and received in return each his pro rata proportion of the increased capital stock without the payment of additional consideration. All of the authorized capital stock is now issued and outstanding. Applicant does not claim that its property is worth the full par value of the issued stock, but alleges that the value of its original property with such extensions, and improvements as have been made subsequently thereto, less amounts charged off to replacements, was on August 17, 1912, the sum of $206,812.89. The Commission has not investigated the value of applicant's property.

For the last fifteen years applicant has paid no dividends. Such surplus as was accumulated during this period has gone back into the property for extensions and improvements. The profit and loss accounts of applicant, filed with this Commission, show a net profit of $3,402.57 for the year ending December 31, 1910, and of $4,021.27 for the year ending December 31, 1911. Applicant has no bonded indebtedness and no mortgage or deed of trust. Its only indebtedness, apart from the usual running expenses, is evidenced by promissory notes in the amount of $48,000, which notes applicant now desires to refund.

These notes are as follows:

1. Note held by Selah Chamberlain, dated March 13, 1902, in the amount of $38,000, with interest at 8 per cent.

2. Note held by I. J. McDonald, dated July 21, 1908, in the amount of $2,000, with interest at 7 per cent.

3. Note held by Santa Rosa National Bank, dated June 1, 1910, in the amount of $7,000, with interest at 7 per cent.

4. Note held by Santa Rosa National Bank, dated December 13, 1911, in the amount of $1,000, with interest at 7 per cent.

These notes are all due and payable. Applicant alleges that their proceeds were used in building conduits, elevating dam at reservoir

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site, purchasing water rights and extending its distributing system and not for purposes properly chargeable to operating expenses or to maintenance.

Applicant now desires to refund these obligations by issuing new promissory notes, to run for five years, in the amount of $48,000, and to secure the same by a deed of trust to Union Trust Savings Bank, of Santa Rosa, conveying all of applicant's real estate, machinery, pipe lines and water rights. A copy of the proposed deed of trust is attached to the petition and marked "Exhibit B." Applicant has made arrangements to secure this money at 6 per cent interest, thus effecting a material saving in its annual interest payments. For the year ending December 31, 1911, applicant's total revenue was $14,815.65, of which amount $4,021.27 is represented to be net gain, credited to surplus. Applicant has made no deductions for depreciation but when replacements are made, charges the entire replacement to operating expenses. In view of the showing as to net gain and of the other facts herein set forth there would seem to be no reasonable doubt of applicant's ability to meet the interest payments on the notes now proposed to be issued and to set aside a sinking fund for their redemption. The arrangement is one obviously to the advantage of applicant without any corresponding disadvantage to the rate paying public. I find that public convenience and necessity will be served by the grant of this application and recommend that it be granted.

I submit herewith the following form of order:

ORDER.

Santa Rosa Water Works having applied to this Commission for an order authorizing it to execute its promissory notes in the appregate amount of $48,000, to be secured by its deed of trust to Union Trust Savings Bank, of Santa Rosa, the proceeds of said notes to be used to refund present outstanding obligations, as will hereinafter appear with greater particularity, and a public hearing having been held upon said application, and this Commission finding that said purpose is not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Santa Rosa Water Works, be, and the same is, hereby authorized to issue its promissory notes, payable five years from date, in the aggregate amount of $48,000, and to secure the same by a deed of trust to Union Trust Savings Bank, of Santa Rosa, conveying all of applicant's real estate, machinery, pipe lines and water right, on the trusts therein specified, said deed of trust to be substantially in the form attached to the petition in this proceeding and marked "Exhibit B," on the following conditions and not otherwise, to wit:

1. Applicant shall issue its said notes for not less than their face

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value and the interest thereon shall not exceed six (6) per cent per annum.

2. The proceeds from said notes shall be used only for the discharge or refunding of applicant's obligations as follows:

(1) Note held by Selah Chamberlain, dated March 13, 1902, in the amount of $38,000, with interest at 8 per cent.

(2) Note held by I. J. McDonald, dated July 21, 1908, in the amount of $2,000, with interest at 7 per cent.

(3) Note held by Santa Rosa National Bank, dated June 1, 1910, in the amount of $7,000, with interest at 7 per cent.

(4) Note held by Santa Rosa National Bank, dated December 13, 1911, in the amount of $1,000, with interest at 7 per cent.

3. Applicant shall keep separate, true, and accurate accounts showing the receipt and application in detail or the proceeds of the promissory notes hereby authorized to be issued, and on or before the twenty-fifth day of each month applicant shall make verified reports to this Commission, stating the disposition of said notes during the previous month, the moneys realized therefrom, and the use and application of said moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

4. The authority hereby given to issue promissory notes shall apply only to notes issued by applicant on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of September, 1912.

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DECISION NO. 220.

D. CAMES COMPANY ET AL.
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 226.

Decided September 12, 1912.

Complaint alleges that upon shipments of live stock respondent collected charges based upon through commodity rate and in excess of the combination of intermediate class and commodity rates. Upon an order previously entered in this matter, the parties having failed to determine the specific claims of reparation which were allowed by the decision, and having again submitted the matter to the Commission,

Held, That respondent make reparation to complainants in the sum specified herein, together with interest at the rate of seven per cent per annum from the date of payment of such charge.

J. O. Bracken, for complainants.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

SUPPLEMENTAL DECISION.

GORDON, *Commissioner.*

The complaint in this action is for a recovery of alleged overcharges collected by the defendant on live stock shipments over its line between two points within this State. The complaint is based upon the fact that the through commodity rate collected by defendant was in excess of the combination of intermediate class and commodity rates.

The Commission rendered its decision in this case on January 29, 1912, and stated therein that the parties to the action should determine the specific claims of reparation which were allowed by the decision, or in case an agreement was not possible, that the parties should again appear before the Commission and that the Commission would thereupon determine the specific claims of reparation which were allowed.

The parties were unable to agree upon the application of the Commission's decision to certain shipments hereafter mentioned, and the Commission thereupon directed that a rehearing be had to settle this dispute.

The shipments in question were made from various points of origin to San Francisco. The exact routing of the shipments between these points was not disclosed, the assumption being made, however, both in the pleadings and at the hearing, that the shipments were so routed

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that provided a combination of rates is allowable to attack the through rate which was charged, such combination may be made upon Richmond as an intermediate point in these shipments. The only question presented at the hearing was whether or not Rule 7*a*, C. R. C. Tariff Circular No. 1, when considered with reference to the provisions of defendant's live stock tariff applicable to these shipments prevents combinations being made to defeat the through rate charged upon these shipments, which through rate exceeded the class rate from the point of origin to Richmond, plus the commodity rate to San Francisco.

It would seem that reparation should be allowed upon such of the shipments as occurred subsequent to November 21, 1910, at which date Rule 7*a*, C. R. C. Tariff Circular No. 1 was amended to read as follows:

> "In every instance where a class or commodity rate is named in a tariff between specified points the lowest of such rates is the lawful rate; provided, that if some combination of class or commodity rates, or class and commodity rates is found to be lower than the through rate, the lower combination of rates shall apply and the carrier shall immediately make its through rate correspond to the lower combination of rates. It being the intention to give the shipper the advantage of the lowest possible rate."

The defendant company, however, objects to the application of this rule to the shipments in question for two reasons:

(1) The Commission has already recognized, both in the case of *B. J. McCullough* vs. *Southern Pacific Company,* Case No. 225, and in the original decision in the present case, that according to the provisions of defendant's tariff, as applicable to the facts of said two cases, the publication of a specific commodity rate upon live stock shipments between two points supersedes the class rate upon such shipments. The defendant contends that accordingly the class rate from the point of origin to Richmond was superseded by the commodity rate from the point of origin to San Francisco, the destination. There is no merit in this contention. The class rate which is superseded is the class rate applicable between the same points to which the commodity rate is also applied.

The commodity rate does not supersede nor prevent a combination of intermediate class and commodity rates, in accordance with Rule 7*a*, C. R. C. Tariff Circular No. 1, quoted above.

(2) It appeared at the rehearing that defendant has no facilities at Richmond for loading and unloading live stock.

Defendant's live stock circular No. 2, C. R. C. No. 1212, Item No. 2, provides that in such cases the shipper must himself furnish the facilities for loading and unloading. These facilities are furnished by the defendant on through shipments from the point of origin to San Fran-

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cisco. Defendant contends, therefore, that the class rate to Richmond contemplates a lesser and different kind of service than that performed for the through commodity rate to San Francisco, and for this reason should not be used in a combination to attack that through rate. The Commission can see no merit in this contention as applied to the facts of the case.

It is obvious that the service performed for the through rate to San Francisco is no greater than the combined services represented by the two intermediate rates. While, as a matter of fact, stock shipments are rarely, if ever, made to Richmond, nevertheless, the defendant has published this class rate to Richmond, and in so doing has opened the way for the combination rate set forth in the complaint, and such combination is the rate which should have been charged by the defendant.

Considering now all the claims set forth in the complaint, the Commission finds that excessive rates were collected by the defendant on carload shipments of live stock and moving for consignees, and in the amounts of overcharges as follows:

F. Cames Company	$17 98
Cames & Casalet	6 32
Grayson-Owen Co.	3 06
William Taafe & Co.	14 35
H. Moffatt	100 99
J. B. Horan	15 30
Knierr, Allen & Pyle	1 35
Roth-Blum Packing Co.	34 17
South San Francisco Packing and Provision Co.	83 13
J. G. James Company	23 50

The defendant is hereby ordered and directed to pay to the complainants the sum of three hundred and 15/100 dollars ($300.15), with interest at the rate of seven (7) per cent per annum from the date of payment of said charges.

The above decision is hereby approved and ordered filed as the decision of this Commission.

Dated at San Francisco, California, this 12th day of September, 1912.

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DECISION No. 221.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY TO CANCEL ITEMS 11 AND 12, PAGE 3, TARIFF 291-C, C.R.C. 33, NAMING RATES ON VARIOUS COMMODITIES BETWEEN BENICIA, MAIL DOCK AND SACRAMENTO.

Application No. 112.

Decided September 11, 1912.

Ordered, That applicant be permitted to cancel certain tariff items and to publish in lieu thereof other rates as prescribed.

George D. Squires and *Harry Toll*, for Southern Pacific Company.
Seth Mann and *William R. Wheeler*, for lumber companies.
G. J. Bradley, for Merchants' and Manufacturers' Association of Sacramento.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner:*

This application was originally filed requesting permission to cancel Items 11 and 12, page 3, Tariff 291C, C. R. C. 33, naming rates on various commodities between Benicia, Mail Dock and Sacramento.

At the hearing the application was amended to read as follows:

To cancel Items 11 and 12 in Tariff C. R. C. 33, and in lieu thereof publish rates of 5 cents per hundred pounds on agricultural implements and parts including scrapers, and on bolts, nuts and castings, carload lots, minimum weight 40,000 pounds from Benicia, Mail Dock to Sacramento, California.

Items 11 and 12 in Tariff C. R. C. No. 33 contain many items besides those which applicant now desires to cancel. It developed from the testimony that many of these articles had never moved, and in explanation thereof Mr. James A. Keller, traffic manager for Baker & Hamilton, testified that these rates were put in by applicant some years ago to induce Baker & Hamilton and The Benicia Iron Works to withdraw certain boats which those companies ran between Benicia and Sacramento, and that in making up the list to be comprehended in the tariff at the time this arrangement was entered into, Baker & Hamilton and The Benicia Iron Works included everything that they thought it possible they might want to move.

Mr. H. G. Toll in testifying for applicant submitted the following

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statement of facts as the reason for asking to cancel Items 11 and 12 except as to the exceptions named in the application:

That the class rates per rail movement from San Francisco to Sacramento are as follows:

1	2	3	4	5	a	b	c	d	e
24	21	18	16	13	13	13	11	9½	9½

which are made in competition with water craft. Under Rule 7*a* of Commission's Tariff Circular No. 1, as amended by Supplement 2, November 21, 1910, it became possible to ship commodities mentioned in this application at rates lower than the above mentioned class rates by applying the combination on Benicia.

> "That since that time applicant has had to apply the sum of the locals and that the sum of these locals is unremunerative; that the combination was used to break down the rates on certain articles from San Francisco as far east as the Nevada state line and north to the Oregon state line; that these rates were made solely to meet water competition to Sacramento and that they were willing to publish them in their steamer tariff."

Considerable testimony was offered as to the extent that this combination was being used to get a less rate than the through rate and as to the justice and equity of permitting cancellation applied for. Mr. Mann and Mr. Wheeler, representing the lumber interests, objected to applicant's request, but finally entered into a stipulation to withdraw their objection provided applicant would publish a rate of $1.50 per ton on lumber and the ordinary products manufactured from lumber between San Francisco and Sacramento. This stipulation was agreed upon only after Mr. Wheeler and Mr. Mann and the Commissioner sitting in the case had been satisfied by Rate Expert Sanborn that the cancellation requested by applicant would not affect the rates on items which it was desired to cancel from San Francisco to points beyond Sacramento in L. C. L. shipments, and also after Mr. G. J. Bradley, representing the Merchants' and Manufacturers' Traffic Association of Sacramento, had agreed to the stipulation.

I, therefore, recommend that upon condition that applicant shall publish the rate of $1.50 per ton on lumber from San Francisco to Sacramento to become effective on the same date as the cancellation of items in Items 11 and 12 in Tariff C. R. C. No. 33 herein prayed for, and shall at the same time publish and make effective in its steamer tariffs the items canceled by the granting of this application; that the prayer of the applicant be granted and that the following order be issued:

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ORDER.

The Southern Pacific Company having applied for permission to cancel Items 11 and 12 in Tariff C. R. C. No. 33, and in lieu thereof to publish rate of 5 cents per 100 pounds on agricultural implements and parts, including scrapers, and on bolts, nuts and castings, carload lots, minimum weight 40,000 pounds, from Benicia, Mail Dock to Sacramento;

And applicant having stipulated to put in effect a rate of $1.50 per ton on lumber from San Francisco to Sacramento at the same time that it puts in effect the rate asked for in the application on the exceptions;

And it appearing that no shipper or receiver of freight will be adversely affected on shipments of products herein canceled from San Francisco to points beyond Sacramento, in L. C. L. shipments,

It is hereby ordered that the prayer of applicant be granted and that it be authorized to cancel Items 11 and 12 in Tariff C. R. C. No. 33 from Benicia, Mail Dock to Sacramento, and to publish in lieu thereof a rate of 5 cents per 100 pounds on agricultural implements and parts, including scrapers, and on bolts, nuts and castings, carload lots, minimum weight 40,000 pounds between points mentioned, upon condition that at the same time and effective on the same date applicant shall publish a rate of $1.50 per ton on lumber between San Francisco and Sacramento as stipulated herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of September, 1912.

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DECISION No. 222.

IN THE MATTER OF THE APPLICATION OF T. G. SCHMEISER ET AL., FOR AN ORDER AUTHORIZING THE ABANDONMENT OF PORTIONS OF CERTAIN PUBLIC HIGHWAYS, ACROSS THE PROPERTY OF SOUTHERN PACIFIC RAILROAD COMPANY IN THE TOWN OF DAVISVILLE, YOLO COUNTY, CALIFORNIA.

Application No. 200.

Decided September 11, 1912.

W. O. Russell, for applicant.
E. B. Leavitt, for Southern Pacific Railroad Company.
M. H. Stitt, for Board of Supervisors, Yolo County, California.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

T. G. Schmeiser et al., freeholders of Yolo County, California, having on August 22, 1912, filed with this Commission an application for authority to vacate and abandon portions of certain public highways now crossing the property of Southern Pacific Railroad Company in the town of Davisville, Yolo County, California, as hereinafter indicated, and a public hearing having been held at Woodland on September 4, 1912, at which applicants and other parties interested were represented; and it appearing from the testimony taken at said hearing that it is reasonable and practicable and in the interest of the public that said application be granted,

It is hereby ordered that permission be hereby granted to applicants, to the board of supervisors of said Yolo County, and to Southern Pacific Railroad Company to vacate, abandon, and close to public use the following public highways in the said town of Davisville, viz:

(1) All that portion of First street lying between a line drawn parallel to and one hundred and ten (110) feet north of the north line of Olive street and the south line of Plum street.

(2) All that portion of Pine street lying between a line drawn parallel to and two hundred and eighty (280) feet west of the west line of Front street and a line drawn parallel to and two hundred and eighty (280) feet east of the east line of Second street.

It is further ordered that this order shall be hereafter subject to such amendment, revision, or modification as to this Commission may seem just and proper, and this Commission reserves the right to revoke the

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permission hereby given if public convenience and necessity demand such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of September, 1912.

DECISION No. 223.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE GENERAL AND REFUNDING FIVE PER CENT BONDS TO THE AMOUNT OF FIVE MILLION DOLLARS.

Application No. 210.

Decided September 14, 1912.

Application for permission to issue bonds and to use the proceeds for extensions and betterments.

Held, That the value of the added property will considerably exceed the amount of increase of the outstanding obligations and applicant, as a result of this bond issue alone, will be in a better position financially than before the issue.

Held, That certain controlling circumstances, described, also justify the issue.

Charles P. Cutten and *W. B. Bosley* for Pacific Gas and Electric Company.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner:*

Pacific Gas and Electric Company applies for an order of this Commission authorizing the issue of bonds having a face value of $5,000,000. Applicant proposes to use the proceeds from the sale of these bonds, as far as they may apply, for the purpose of constructing two additional hydroelectric power plants with dams, reservoirs, conduits, ditches, tunnels, flumes, and appurtenances on the South Fork of the Yuba River in Nevada County and the Bear River in Placer County; for the construction of an electrical transmission line from these plants to a point in Solano County opposite Crockett, in Contra Costa County; for the construction of a new steam power station at Sacramento; for the installation of meters in Sacramento; for the construction of a two circuit steel tower line from Cordelia to San Rafael; and for the extension and improvement of its facilities to meet the growing requirements of its business as set forth in specific detail in the application. According to applicant's figures, the projects to which it desires to devote the moneys

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to be received from the sale of the bonds will cost $12,282,441.02. The plan of financing the projects in excess of the sum to be received from the sale of the $5,000,000 of bonds is left to a later date.

Pacific Gas and Electric Company was formed by the consolidation of a large number of electric power companies.

It is engaged in the business of generating, distributing, and selling gas and electricity for light, heat and power; of generating and distributing steam for heat; of storing, distributing, and selling water for domestic uses and power and irrigation; and of operating a street railway system. Applicant's principal place of business is San Francisco. It sells gas and electricity over a large section of northern and central California, including the cities about San Francisco Bay. It sells steam for heating purposes in Oakland and San Francisco, and it owns and operates the street railway system in the city of Sacramento. It supplies electricity to the inhabitants of one hundred and eighty-seven cities and towns, gas to forty-nine cities and towns, water to ten, steam to two. It serves with gas and electricity thirty counties of the State.

Applicant owns and operates seventeen gas works in cities and towns of the State. The greater part of the electric energy used by applicant is generated in eleven hydroelectric stations located in the counties of Butte, Yuba, Placer, Nevada, Sacramento, and Amador with a capacity of 92,973 horsepower. Pacific Gas and Electric Company also owns and operates four stations for the generation of electricity by steam, two in San Francisco, one in Oakland, and one in San Jose. A fifth steam station is nearing completion in Sacramento. The steam installations have a combined capacity of 99,600 horsepower.

The hydroelectric installation contemplated in the South Yuba and Bear River development will increase the generating capacity of Pacific Gas and Electric Company by 40,000 kilowatts.

Applicant submits the following estimates of cost for this development:

Construction of Drum power plant of 40,000 kilowatt capacity	$1,650,000 00
Construction of steel tower transmission lines from Drum power house to Cordelia substation	1,389,000 00
Construction of concrete dam and spillway	2,280,000 00
Construction of canal, forebay and syphon line to convey water from Lake Spalding to Drum power plant	1,274,500 00
	$6,593,500 00

Applicant lists other general construction requirements at $2,101,178.51. Included in this estimate are:

Steam power station at Sacramento	$409,820 04
Installation of meters on Sacramento services	109,051 00
Two circuit steel tower lines, Cordelia to San Rafael	327,550 00

And a large number of improvements in smaller amounts.

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For "New construction arising out of the development of the company's business and the addition of new consumers from day to day," Pacific Gas and Electric Company proposes to expend to June 30, 1913, the sum of $3,587,762.51, as follows:

Electric department	$1,500,000 00
Gas department	1,000,000 00
Railway department (Sacramento)	250,000 00
Water department	125,000 00
Steam sales	125,000 00
Miscellaneous	50,000 00
New office building at Sacramento and addition to San Francisco building and other structures	350,000 00
Purchase of property of Los Gatos Gas and Electric Company	187,762 51
Total	$3,587,762 51

The construction contemplated in the electrical, gas, water and steam departments as above set forth embraces for the most part the service connections for new business during the year.

These figures, applicant states, are based upon computations of the average cost of service installations and the number of new services that may reasonably be anticipated during the year ending June 30, 1913.

It is obviously impossible for this company to submit a detailed statement of these service extensions in advance. The demand for service must be met as it arises in the daily course of the company's business. In this connection applicant proposes that it file with this Commission monthly statements showing in detail where and for what specific purpose the money derived from the sale of its bonds shall have been expended.

Pacific Gas and Electric Company has an authorized stock issue in the sum of $160,000,000, of which $10,000,000 is preferred and $150,000,000 common stock. Preferred stock to the amount of $10,000,000 is issued and outstanding. Of the common stock, $31,998,750 is in the hands of the public and $31,696,866.66 is held by subsidiary companies.

Under the provisions of the general and refunding mortgage of this company it is authorized to incur a bonded indebtedness in the sum of $150,000,000. Underlying mortgages are declared closed. Bonds are outstanding against Pacific Gas and Electric Company and in the hands of the public in the amount of $71,251,000; in the company's treasury $251,000; held in the company's sinking fund $1,888,000.

The $5,000,000 of bonds proposed to be issued are part of the authorized issue of $150,000,000, of which there are outstanding at the present time $20,000,000; there have been canceled through sinking funds $235,000, leaving an unissued balance of $129,765,000.

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Under the terms of the mortgage this balance must be applied as follows:

For refunding underlying issues	$51,443,000 00
For additions to plant	78,322,000 00
	$129,765,000 00

For the calendar year, 1911, earnings and expenditures of applicant were:

Gross earnings	$14,426,258 52
Operating expenses	8,214,071 97
Net earnings from operation	$6,212,186 55
Other income (net)	178,350 78
Total net income	$6,390,537 33
Interest	3,254,133 27
Balance	$3,136,404 06
Bond discount and expense	75,671 84
Surplus earnings	$3,060,732 22

Dividends are at the present time distributed on the following basis:

Six per cent on $10,000,000 of preferred stock	$600,000 00	per year
Five per cent on $31,998,750 of common stock	1,599,937 50	per year
Total dividends	$2,199,937 50	

Sinking fund requirements under the general and refunding mortgage amount to 1 per cent of outstanding bonded indebtedness and bonds alive in sinking fund, which at the present time means an annual charge of $731,390.

In its statement of assets of December 31, 1911, applicant gives "plant and other property" at $108,791,049.17.

Applicant now petitions for authority to sell $5,000,000 of its general and refunding five per cent thirty year gold bonds of the denomination of $1,000 each and to be numbered Series A from number 20236 to number 25235, inclusive, to be issued under and secured by applicant's general and refunding mortgage bearing date of December 1, 1911, and executed by and between Pacific Gas and Electric Company, Bankers' Trust Company of New York, corporate trustee, and Frank B. Anderson, individual trustee, of San Francisco.

Under the terms of this mortgage additional bonds may be issued for betterments, improvements, extensions, and acquisitions of new property only when the earnings available for bond interest are at least one and one half times the interest on all outstanding bonds, including the bonds to be issued, save such as may be held in sinking funds. Bonds may be issued in a sum not to exceed 90 per cent of the cost of the additions to property.

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Applicant has contracted for the sale of its bonds in the sum of $5,000,000 to J. P. Morgan and Company of New York at 85 per cent of their face value.

I am not at all satisfied with the company's financial statement. It is in entirely too general a form and admittedly is not based upon anything except estimates.

In 1910 the report of this company to the Commission shows "Rights and good will $19,998,500," while in 1911 the same item appears as $12,592,849.47. It is explained that this discrepancy is brought about partly by the fact that the company had in its treasury, or used in its system for extensions, a considerable amount which could have been properly attributed to dividends. I do not consider that the explanation is satisfactory, and, as it was admitted by one of the witnesses for the company, this item is arrived at by taking the par value of the common stock.

We have heretofore discussed the relationship which exists under the California practice of financing between outstanding stock issues and the value of the property (*in re* application of Northern California Power Company, Application No. 62).

Under the terms of the deed of trust the company may only receive the proceeds from $900 par value of bonds when it has expended $1,000 for purposes that are entirely proper under the Public Utilities Act against which to issue bonds. Bearing in mind the fact that these bonds are to be sold at 85, it is readily seen that of every dollar's worth of money which the company must expend on additions, betterments, etc., it may only realize 76½ cents from the proceeds of this bond issue. This leaves a difference of 23 5/10 cents in every dollar which must be realized from other sources. It is stated that it is expected to make up this difference from money now in the treasury, from legitimate profits turned back into the business and therefore available for capital, and from money properly assignable to a depreciation account. It well may be that these sources will not yield a sufficient amount to make up the needed sum, in which event the money will have to be secured from the sale of the common stock, which is the only other asset of this corporation. The practice of devoting current revenues to capital account is a dangerous one unless it is carefully restricted. Rates should only be high enough to render a reasonable and adequate return upon the property used and necessary in the public service. If more than this is realized from rates, they are too high, and while the legal title to such excessive return probably is in the company since it is acquired from legally established rates and so may be legally invested in a capital account, yet by so doing ultimately the company will secure the entire title to its property from its rates, provided it is allowed in addition a

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proper depreciation charge. It should be very carefully determined, therefore, that investment in capital from revenue is drawn entirely from revenue which is the result of reasonable rates.

While I am not satisfied with the valuations set out by this company, still I have no hesitancy in approving this bond issue, because of the fact that the value of the added property will considerably exceed the amount of increase of the outstanding obligations, and the company as a result of this bond issue alone, if the terms of the trust deed are complied with, will be in a better position financially than before the issue. Furthermore, the earnings during the past two years show that from the standpoint of its earnings the company is easily able to take care of this added outstanding obligation.

On the 23d day of October, 1911, the common stock of petitioner was increased from $20,000,000 to $150,000,000. Applicant explains that this was done because of its desire to provide for the $150,000,000 bond issue covered by the deed of trust filed herein and the then necessity of having the authorized capital stock equal to the proposed bond issue. Any attempt to forestall legislative control of stock and bond issues is strongly disclaimed. Practically the entire issue of $10,000,000 preferred and $20,000,000 common was issued and in the hands of the public at the time of the increase of capital stock heretofore referred to. There is at the present time issued and outstanding $10,000,000 preferred stock and $63,695,616.66 common, thus indicating that since the increase in its capital stock the company has disposed of approximately $43,695,616.60, of this amount $31,696,866.66 is in the hands of subsidiary corporations, and from the evidence it appears that this entire amount is held by the San Francisco Gas and Electric Company, and was turned over to it in return for its property before the effective date of the Public Utilities Act. I would advise a very careful investigation into the affairs of this subsidiary company holding this large block of stock at the present time were it not for the fact that the officials of the Pacific Gas and Electric Company, who control this company, stated under oath that it never has been and is not now the intention of this corporation to dispose of any of said stock, and counsel for the Pacific Gas and Electric Company stipulated in the record at this Commission's request to submit all of the facts surrounding the ownership of this stock and the condition of this company to the Commission, and not to take any action with reference thereto without the further consideration of this Commission. Were it not for these facts and the further fact that very large additional bond issues are contemplated by applicant from the amount authorized and covered by the deed of trust, I would recommend that conditions be imposed concerning this stock, but I rely upon the assurance of the officials of this company, and furthermore, if any necessity appears the matter can be gone into and the interest of the

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public can be easily protected at the time of subsequent applications. The time within which the agreement for the sale of these bonds must be executed is short, and unless there should be some controlling public consideration I do not believe it is necessary to impose conditions the effect of which might be to interfere with the getting of the funds from this bond issue which seem to be immediately necessary. As to the probable success of this enterprise the Commission has heretofore in several instances stated that it does not guarantee the success of any enterprise, but the evidence seems to indicate that at a much smaller cost per horsepower than the original installation would require, this large additional installation may be made available, and that there is a probability that a market may be found by this company for the same.

I therefore submit the following order:

ORDER.

Application having been made to the Railroad Commission of the State of California by the Pacific Gas and Electric Company for authority to issue $5,000,000 par value of its general and refunding mortgage gold bonds under the terms and conditions set out in its general and refunding mortgage of December 1, 1911, by and between said company and the Bankers' Trust Company of New York, corporate trustee, and Frank B. Anderson of San Francisco, individual trustee, which mortgage is duly on file with this Commission in this case and reference to which is hereby made for particulars, said bonds to be payable January 1, 1942, and to bear interest at the rate of 5 per cent per annum, payable semiannually and to be of the denomination of $1,000 each and to be numbered Series A, No. 20236 to No. 25235, inclusive,

And a hearing having been regularly held and it appearing that said applicant has entered into a contract with J. P. Morgan & Company of New York for the sale and delivery of all said bonds at 85 per cent of their par value and accrued interest thereon, which sale and delivery was made conditional upon the applicant's obtaining from the Railroad Commission of the State of California, the necessary consent and authority therefor; and

It further appearing that the money to be procured by the issue, sale, and delivery of said bonds of the Pacific Gas and Electric Company to the amount of $5,000,000, face value payable at a period of more than twelve months after date hereof, to wit: January 1, 1942, is necessary to and reasonably required by said Pacific Gas and Electric Company for the acquisition of property and for the construction, completion, extension, and improvements of its facilities and service; and

It further appearing that said purposes are not in whole or in part reasonably chargeable to operating expense or income.

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It is hereby ordered as follows: The Pacific Gas and Electric Company, the applicant herein, is hereby authorized to issue $5,000,000 face value of the principal of said bonds to be payable January 1, 1942, and to bear interest at the rate of 5 per cent per annum, payable semi-annually, which said bonds are to be designated as "general and refunding mortgage gold bonds" of the denomination of $1,000 each and to be numbered Series A, No. 20236 to 25235, inclusive, and are to be in the form prescribed by and are to be issued under and in pursuance of the terms of and secured by that certain general and refunding mortgage of December 1, 1911, and executed by and between Pacific Gas and Electric Company, a corporation, the applicant herein, party of the first part, and Bankers' Trust Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, the corporate trustee, and Frank B. Anderson of the city and county of San Francisco, State of California, individual trustee, parties of the second part, on the following conditions and not otherwise, to wit:

1. Said Pacific Gas and Electric Company is hereby authorized to sell said bonds at not less than 85 per cent of their par or face value and accrued interest thereon;

2. The proceeds from the sale of said bonds shall be applied by said applicant, the Pacific Gas and Electric Company, only to the acquisition of property used or useful in the performance of its service to the public and for the construction, completion, extension and improvement of its facilities and service, for the reimbursement of any moneys which have been expended since July 31, 1912, or which may hereafter be actually expended from its income or from other moneys in its treasury not secured by or obtained from the issue of stocks or stock certificates or bonds, notes or other evidences of indebtedness of said Pacific Gas and Electric Company for any of the aforesaid purposes.

3. Said Pacific Gas and Electric Company, the applicant herein, shall keep separate and accurate accounts showing the receipts and application in detail of the proceeds of the sale or disposal of said bonds hereby authorized to be issued, and shall monthly make a verified report to the Commission as required by General Order No. 24 of this Commission (which order so far as applicable is made a part of this order), stating the sale or sales of bonds during the previous month, the amount of money realized therefrom and the use and application in detail of said money and the specific purposes for which each and every part of said moneys so derived from the sale of said bonds have, during the preceding month, been expended, and in no event shall any expenditure be made from the proceeds of the sale of such bonds for any purposes other than the ones set out herein; and the specific

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purposes for which such expenditures may be made and the amount spent for any one of the purposes not to exceed the respective amounts which follow:

Construction of Drum power plant of 40,000 kilowatt capacity	$1,650,000 00
Construction of steel tower transmission lines from Drum power house to Cordelia substation	1,389,000 00
Construction of concrete dam and spillway	2,280,000 00
Construction of canal, forebay and syphon line to convey water from Lake Spalding to Drum power plant	1,274,500 00
Steam power station at Sacramento	409,820 04
Installation of meters on Sacramento service	109,051 00
Two circuit power line, Cordelia to San Rafael	327,550 00

For new construction arising out of the development of the Company's business and the addition of new consumers:

Electric department	$1,500,000 00
Gas department	1,000,000 00
Railway department	250,000 00
Water department	125,000 00
Steam sales	125,000 00
New office building at Sacramento and San Francisco	350,000 00
Purchase of property of Los Gatos Gas and Electric Company	187,762 51

While these amounts exceed substantially the entire amount of this bond issue, still the company may be permitted to expend an amount on any one of these various projects not exceeding the amount herein specified, the total amount which may be expended on these various enterprises from this bond issue of course being limited to the proceeds of the $5,000,000 bond issue herein authorized. Any additional amounts which may be expended for these purposes must be made up from other sources or from subsequent bond issues approved by this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of September, 1912.

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DECISION NO. 224.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN THE MATTER OF FRANCHISE GRANTED BY ORDINANCE NO. 135 OF THE COUNTY OF INYO.

Application No. 181.

Decided September 16, 1912.

Charles F. Potter, for Southern Sierras Company.
W. B. Matthews, for city of Los Angeles.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

The Southern Sierras Power Company asks for a certificate of this Commission, under section 50 (*b*) of the Public Utilities Act, declaring that the public convenience and necessity require the exercise by applicant of the rights and privileges granted to applicant by the county of Inyo, by Ordinance No. 135. This ordinance was adopted by the board of supervisors of said county on July 6, 1912, and grants to applicant the right for twenty-five years to erect, construct, operate, and maintain an electrical transmission and distribution system over, along, across and upon the public highways of Inyo County, outside of incorporated cities and towns. Bishop is the only incorporated town in the county.

Applicant was incorporated in the early part of 1911 under the laws of the State of Wyoming. It is a subsidiary corporation of the Nevada–California Power Company, which owns most of applicant's capital stock. The stock has a par value of $5,000,000. Nearly all of applicant's capital stock has been issued to Nevada–California Power Company and to Sierras Construction Company, another subsidiary corporation, which has contracted to build applicant's plant and transmission and distribution lines. Applicant's bonded indebtedness is $5,000,000, of which $2,500,000 has been issued.

Nevada–California Power Company, the parent company, was incorporated in 1904, and supplies some ten thousand horsepower of electric energy to mines in Nevada. In California it serves only the town of Bishop. The parent company found itself with a surplus of five thousand horsepower and desired also to find a market for some of the power which may at any time be released from its present use in Nevada. The company accordingly decided to enter the territory to the south of its

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plants on Bishop Creek, in northern Inyo County, and organized the present applicant to construct a transmission line from Bishop through Inyo County and a portion of Kern County to San Bernardino, Riverside and vicinity, where it believes that a good market for its power exists. Within the last two months, applicant has constructed a steam plant in San Bernardino, which plant will be used as an auxiliary when applicant can deliver its hydroelectric power to that territory. Applicant has one plant at Bishop with a capacity of two thousand horsepower and is building another one with a capacity of three thousand horsepower. Applicant also has a contract with its parent company, the Nevada–California Power Company, by which the latter agrees to deliver ten thousand horsepower, as needed. About two hundred and thirty-seven miles of transmission lines are necessary to reach San Bernardino from Bishop. Most of the material for the construction of this line in Inyo County is now on the ground and some work has been done at Bishop and from the southern boundary of the county north to Haiwee. A portion of this work was done prior to March 23, 1912.

At present the total number of horsepower of electrical energy consumed in Inyo County is not over two or three hundred. Applicant's witnesses, however, testified that there are power possibilities in the district between Bishop and Laws, between Independence and Lone Pine, and particularly in the vicinity of Keeler, and that about two thousand horsepower could now be placed in the county, with possibilities for further development in the future.

The city of Los Angeles, in response to the request of the inhabitants, is now supplying to the towns of Independence and Lone Pine electric energy which has been developed in connection with the Los Angeles aqueduct. The city was represented at the hearing by W. B. Matthews, attorney in aqueduct matters, and E. F. Scattergood, its chief electrical engineer, who stated that the city would not oppose the granting of the application. This position relieves me of the necessity of considering certain questions such as priority of service, reasonableness of rates and service and of policy as to extensions, to which attention would otherwise have to be given.

In granting this application, the Commission does not express any opinion on certain questions which would become very pertinent if this were a rate hearing or an application to issue stocks, or bonds or other evidences of indebtedness. One of these questions is whether applicant, with its rather limited supply of hydroelectric power and its long transmission lines can conduct its hydroelectric business at a profit. Another matter to which this Commission would on a proper hearing give very careful consideration is the relationship existing between the applicant and the Sierras Construction Company, a subsidiary construction company controlled by the same people, which is constructing its plant and

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transmission and distribution lines. The construction of a utility's plant by a subsidiary construction company consisting of the same people will always call for the most careful scrutiny of this Commission in a rate case or on an application to issue stocks, bonds or other securities to pay for the construction.

The question before the Commission on this application is simply the approval of a franchise granted by the county of Inyo. I find that there is a possibility of developing the use of additional power in Inyo County and recommend that the application be granted.

I submit herewith the following form of order:

ORDER.

The Southern Sierras Power Company having applied to the Commission for a certificate that public convenience and necessity require the exercise by said company of the rights and privileges granted to it by Ordinance No. 135 of the county of Inyo, for the erection, construction, operation and maintenance, for a period of twenty-five years, of an electrical transmission and distribution system over, along, across and upon the public highways of said county, outside of incorporated cities and towns, and a public hearing having been held upon said application, and the city of Los Angeles being represented at said hearing and stating that it has no objection to the granting of said application, and the Commission finding that public convenience and necessity will be served by the grant of said application,

It is hereby declared that public convenience and necessity require the exercise of the rights and privileges granted to applicant by said ordinance and it is ordered that said application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of September, 1912.

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DECISION No. 225.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACKS AT GRADE ACROSS ORANGE AVENUE IN STRAWBERRY PARK, LOS ANGELES COUNTY.

Application No. 220.

Decided September 16, 1912.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company, a corporation, having on September 11, 1912, filed with the Commission its application for permission to construct its main line double tracks at grade across Orange avenue, in Strawberry Park, Los Angeles County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary permit or franchise from the county authorities of Los Angeles County, California, for the construction of said tracks at grade; and it further appearing to the Commission that it is not reasonable nor practicable to avoid a grade crossing with said Orange avenue, and that application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Pacific Electric Railway Company, a corporation, to construct its main line double tracks across Orange avenue, in Gardena Tract, Strawberry Park, Los Angeles County, California, beginning at a point about three hundred (300) feet north of the north line of Olive avenue in said Gardena Tract, thence in a northeasterly direction across Orange avenue, as shown by the map attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings together with the expense of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall also provide the necessary guardrails or plank for the construction of said crossings, and shall ballast same with not less than six (6) inches of broken stone or gravel ballast, and shall in every way make said crossings safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and pro-

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tection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of September, 1912.

DECISION No. 226.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF SIX HUNDRED THOUSAND SHARES OF COMMON STOCK AND SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS FACE VALUE OF BONDS.

Application No. 38.

Supplementary Order—Issued September 17, 1912.

REPORT OF THE COMMISSION.

Whereas the Railroad Commission on the 29th day of June, 1912, made its order in the proceeding entitled as above, authorizing applicant to issue certificates of stock and bonds in the amounts and for the purposes and under the conditions specified in said order; and,

Whereas it now appears to the Commission from statement dated August 24, 1912, filed with the Commission by said Tidewater Southern Railway Company and from investigations made into the records of said company by this Commission's employees, that said Tidewater Southern Railway Company has in the disposition of stock under said order violated the terms and conditions of said order,

It is hereby ordered that said opinion and order of this Commission dated June 29, 1912, in the proceeding entitled as above be, and the same are hereby suspended so that applicant is prohibited from issuing or in any way disposing of any stocks, bonds or other evidences of indebtedness until applicant shall have satisfied this Commission that it has made good the said violations of said order and until the further order of this Commission.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of September, 1912.

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DECISION NO. 227.

IN THE MATTER OF THE APPLICATION OF HOME TELEPHONE COMPANY OF COVINA FOR AN ORDER AUTHORIZING IT TO ISSUE THREE HUNDRED AND SIXTY-NINE SHARES OF COMMON STOCK.

Application No. 110.

Decided September 17, 1912.

Ordered. That applicant be permitted to issue and sell certain shares of its capital stock upon conditions named, and to use the proceeds for the discharge of obligations.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner:*

This is an application by Home Telephone Company of Covina for an order authorizing the issue and sale of three hundred and sixty-nine shares of common stock at par, $50 per share, or a total of $18,450, with permission to pay commissions on said sale.

Applicant is a telephone company operating without competition in the towns of Puente, Rowland, Irwindale, Charter Oak, San Dimas, Walnut Center, Bassett, Baldwin Park, Valley View, Covina, Azusa, Glendora and intervening territory, in the county of Los Angeles, California.

The capitalization of the company is as follows:

	Authorized.	Outstanding.
Stock all common	$200,000 00	$81,550 00
Bonds at 5 per cent	50,000 00	40,600 00
Additional indebtedness borrowed from banks on one day notes		$16,500 00

The plant value is claimed by applicant to be approximately equal to the outstanding capitalization, but no sufficient evidence was produced upon which to base an intelligent conclusion as to this. The testimony shows that the money represented by the $16,500 of indebtedness, which it is proposed to pay off with the proceeds of this stock sale, went into extensions and additions to the plant, which makes it a proper basis for capitalization.

Applicant's accounts show that for two years it has paid all fixed charges, including 6 per cent on the floating debt of $16,500, and, in addition, a dividend of 6 per cent on its outstanding stock, and has on hand a surplus of $3,000. Because of the failure to show that depreciation has been properly taken care of, it is impossible to determine whether an accurate statement of net income has been or can be made at this time. However, this matter should be left for future determina-

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tion after the uniform system of accounting, now being prepared by the experts of the Commission, has been installed.

As the $16,500 is an indebtedness, payment of which may be demanded at any time, the interest on which is a fixed charge against the company, and the result of the sale of this stock and the payment of this debt would be to change this indebtedness with its fixed charge for interest into a stock ownership upon which dividends may be paid at the option of the company, I recommend that the application be granted and that a commission on the sale, not to exceed 5 per cent on the par value of the stock, be allowed to be paid.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Home Telephone Company of Covina for an order authorizing the issue by said company of three hundred and sixty-nine shares of its capital stock, par value $50 per share, and authorizing the sale thereof at par, with permission to pay a commission on said sale;

And the hearing having been duly held, and it appearing to the Commission that the money to be secured by the issue of said stock is necessary and reasonably required by said company for the discharge of its obligations, and that the purposes for which the proceeds of the sale of said stock are to be used are not, in whole or in part, reasonably chargeable to operating expenses or income;

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue, by Home Telephone Company of Covina, of three hundred and sixty-nine shares of capital stock, or so much thereof as may be necessary for the purposes set out herein, said stock to be issued upon the following conditions, and not otherwise:

1. Home Telephone Company of Covina shall sell the stock hereby authorized so as to net said company not less than 95 per cent of the par value thereof.

2. The proceeds from the sale of said stock shall be used for the following purposes only:

For the payment and discharge of obligations and indebtedness owed to banks, as specified in application, $16,500.

Any surplus left in the hands of the company from the sale of said stock, after paying off and discharging the above obligations, shall be held subject to the further order of this Commission.

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the

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Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such stock during the preceding month, the terms and condition of such sale or other disposition, the money realized therefrom and the use and application of such moneys.

4. The authority hereby given to issue such stock shall apply only to stock issued by said company on or before the thirtieth day of September, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of September, 1912.

DECISION No. 228.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN COUNTIES GAS COMPANY FOR AN ORDER AUTHORIZING ISSUE OF BONDS.

Application No. 107.

Decided September 20, 1912.

REPORT OF THE COMMISSION.

The Southern Counties Gas Company having on September 19th made written request to this Commission that the above entitled application be dismissed,

It is hereby ordered that the above entitled application be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 20th day of September, 1912.

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DECISION NO. 229.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY TO ESTABLISH ALL RATES ON LIVE STOCK ON A THIRTY-SIX-FOOT CAR BASIS WITH PERCENTAGE SCALE FOR LONGER AND SHORTER CARS, IN LIEU OF PRESENT THIRTY-FOOT CAR BASIS AND PERCENTAGE SCALE FOR LONGER CARS, AS NOW SHOWN IN SOUTHERN PACIFIC COMPANY GENERAL FREIGHT DEPARTMENT TARIFF NUMBER 188-E, C. R. C. 1214.

Application No. 185.

Decided September 20, 1912.

Harry Toll, for Southern Pacific Company.
J. O. Bracken, for H. Moffatt Company, J. G. Johnson, Henry Levy, Grayson-Owen Company and F. Cames Company.
V. M. Smith, for Western Meat Company.
Charles Clifford, for Roth, Blum Packing Company.
R. A. Cahalan, for California Wholesale Butchers' Traffic Association.
Irving Lewis, for Grayson-Owen Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner:*

This is an application for authority to establish the rates on live stock cars on a 36 foot 6 inch basis. The base has heretofore been for a 30-foot car. As first filed, the application was for a 36-foot base, but at the hearing was amended to read 36 foot 6 inches. During the consideration, however, the length 36 foot 6 inches was dropped and agreement found herein reached on the 36 foot base. The base has heretofore been on a 30-foot car, and cars greater in length than 30 foot have been charged at a certain per cent above the charge for 30 foot car, for instance:

Cars 30 feet in length to but not including 31 feet, 100 per cent of rate for 30-foot car.
Cars 31 feet in length to but not including 32 feet, 103 per cent of rate for 30-foot car.
Cars 32 feet in length to but not including 33 feet, 106 per cent of rate for 30-foot car.
Cars 33 feet in length to but not including 34 feet, 109 per cent of rate for 30-foot car.
Cars 34 feet in length to but not including 35 feet, 112 per cent of rate for 30-foot car.
Cars 35 feet in length to but not including 36 feet, 115 per cent of rate for 30-foot car.
Cars 36 feet in length to but not including 37 feet, 118 per cent of rate for 30-foot car.
Cars 37 feet in length to but not including 38 feet, 121 per cent of rate for 30-foot car.
Cars 38 feet in length to but not including 39 feet, 124 per cent of rate for 30-foot car.
Cars 39 feet in length to but not including 40 feet, 127 per cent of rate for 30-foot car.
Cars 40 feet in length, 130 per cent of rate for 30-foot car.

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The reason given for desiring to make the change was that in the equipment of the Southern Pacific Company now in service, there are but two 30-foot stock cars, and the next sized car is a 34-foot car. The testimony of Mr. Toll developed that there would be no advances as a result of this change except in cases where a man had only a small number of head of stock to ship, but not enough to fill his car, in which case he would have to use a 34-foot car instead of a 30.

Mr. Toll further testified that there would be quite as many declines as there would be advances, as the road desired to make the rates result in round figures, using no other fraction of a dollar than a half dollar. In other words, if the weight of the shipment multiplied by the rate produced a sum like $30.24, they would make the charge $30.00, whereas, if the odd cents were over twenty-five cents, they would make the charge $30.50.

Considerable testimony was introduced as to the amount of foreign line equipment used by the Southern Pacific Company and the capacity of such equipment, but nothing was developed which materially affected the case. After a lengthy consideration, which was participated in by all parties present, an agreement was reached and a stipulation entered into, as follows:

When rates on live stock provided in the tariffs of the Southern Pacific Company lawfully on file with the California State Railroad Commission apply on live stock loaded in ordinary or stable stock cars 36 feet to and including 36 feet 11 inches in length, inside measurement, rates for longer and shorter cars will be the following percentages of rates named for 36-foot cars:

Cars under 35 feet in length	95 per cent of rate for 36-foot car
Cars 35 feet in length to but not including 36 feet	97½ per cent of rate for 36-foot car
Cars 36 feet to but not including 37 feet	100 per cent of rate for 36-foot car
Cars 37 feet to but not including 38 feet	102½ per cent of rate for 36-foot car
Cars 38 feet to but not including 39 feet	105 per cent of rate for 36-foot car
Cars 39 feet to but not including 40 feet	107½ per cent of rate for 36-foot car
Cars 40 feet to but not including 41 feet	110 per cent of rate for 36-foot car

For each additional foot or fraction thereof in length over 41 feet, an additional charge of 2½ per cent will be made. Fractions of an inch will be disregarded.

An interesting point was raised by Mr. Clifford, representing Roth, Blum Packing Company, the discussion of which was participated in by Mr. Smith of the Western Meat Company and others, to the effect that inasmuch as fractional inches were disregarded, a shipper who understood the tariff, if he were ordering a 35-foot car could order a 35-foot 11-inch car and would only have to pay for a 35-foot car, whereas a shipper who did not understand the matter so well would order and receive a 35-foot car. This might be important, particularly in the

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shipping of sheep and hogs, but the stipulation was finally agreed upon as hereinbefore set forth, and I recommend that said stipulation be adopted as the decision of this commission and that the following order be issued.

ORDER.

Whereas the Southern Pacific Company has applied to this Commission to change its present base for the length of cattle cars on which the rate is made from 30 feet to 36 feet; and

Whereas at the hearing of the case all parties interested entered into a stipulation, agreeing that the base should be changed to 36 feet, and that the rate for a 36-foot car should be 118 per cent of the present rate for a 30-foot car:

Cars under 35 feet in length	95	per cent of rate for 36-foot car
Cars 35 feet in length to but not including 36 feet	97½	per cent of rate for 36-foot car
Cars 36 feet to but not including 37 feet	100	per cent of rate for 36-foot car
Cars 37 feet to but not including 38 feet	102½	per cent of rate for 36-foot car
Cars 38 feet to but not including 39 feet	105	per cent of rate for 36-foot car
Cars 39 feet to but not including 40 feet	107½	per cent of rate for 36-foot car
Cars 40 feet to but not including 41 feet	110	per cent of rate for 36-foot car

For each additional foot or fraction thereof in length over 41 feet, an additional charge of 2½ per cent will be made. Fractions of an inch will be disregarded.

It is hereby ordered that this stipulation be adopted as the decision of this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of September, 1912.

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DECISION No. 230.

IN THE MATTER OF THE APPLICATION OF FRESNO TRACTION COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACKS AT GRADE ACROSS A PUBLIC HIGHWAY IN FRESNO COUNTY, CALIFORNIA.

Application No. 226.

Decided September 20, 1912.

REPORT OF THE COMMISSION.

Fresno Traction Company, a corporation, having on September 16, 1912, filed with the Commission its application for permission to construct its main line double tracks at grade across Railroad avenue, a public highway in Fresno County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid a grade crossing of the said public highway and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Fresno Traction Company to construct its main line double tracks at grade across Railroad avenue on the west side of Southern Pacific Railroad at a point about three hundred (300) feet south of the intersection of Railroad avenue with Olive avenue, in Fresno County, California, as shown by map attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with the expense of maintenance hereafter, in good and first-class condition for the safe and convenient use of the public shall be borne by the applicant.

(2) Applicant shall also provide the necessary crossing plank or guard rails for the construction of the crossing. The crossing shall not be less than thirty-six (36) feet long with grades of approach not exceeding eight (8) per cent. The crossings shall also be ballasted with first class stone or gravel ballast to a depth of not less than six (6) inches.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of September, 1912.

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DECISION No. 231.

PIONEER BOX COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 277.

Decided September 20, 1912.

Complaint alleges charge of excessive, extortionate, and unreasonable rates on shipments of lumber from Sisson to Barnard, California, and asks for reparation. Respondent, denying the allegations, answers that a large portion of the shipments moved prior to October 10, 1911, and that on such shipments the Commission is without jurisdiction to award reparation.

Held, That discriminatory charges were forbidden by section 21, article XIII of the constitution and by statute; that the constitution, as amended on October 10, 1911, gives the Commission authority to make reparation for excessive or discriminatory charges; that this new remedy is barred only by the statute of limitations, and that complainant's remedy was still alive on October 10, 1911.

Held, That claims for reparation which accrued prior to February 10, 1910, are barred by the provisions of the Wright Act, but that claims for reparation which so accrued since February 10, 1910, are alive and reparation may be awarded thereon.

L. A. Bailey, for complainant.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this case applicant asks for reparation on shipments which are alleged to have moved under exorbitant and discriminatory rates. Applicant is engaged in manufacturing wooden boxes at Barnard, Siskiyou County, California. The lumber used in manufacturing said boxes is produced at points on the line of the McCloud River Railroad Company and delivered by that company to the Southern Pacific Company at the town of Sisson, 1 3/10 miles north of Barnard, and the Southern Pacific Company hauls it to applicant at Barnard, for which a rate of 40 cents per net ton subject to minimum weight of 15 tons or a minimum charge of $6.00 per car and often amounting to between $8.00 and $9.00 per car, when loaded in excess of 15 tons per car was charged on the shipments upon which reparation is herein asked for.

At Upton, Siskiyou County, California, other manufacturers of wooden boxes are located who also receive the lumber from which the product is manufactured from points on the line of the McCloud River Railroad Company. Such shipments are also delivered by the McCloud River Railroad Company to the Southern Pacific Company at Sisson,

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and transported by the Southern Pacific Company from Sisson to Upton, a distance of 2 4/10 miles on a rate of $3.00 per car, which applicant claims is a discriminatory rate as compared with the higher rate charged from Sisson to Barnard.

Applicant alleges that at different times requests were made that this discrimination be removed by the application of the same rate from Sisson to Barnard as was applied from Sisson to Upton, but these requests were denied until August 21, 1911, at which time the rate of $3.00 per car was made on shipments from Sisson to Barnard. The rate of $3.00 per car from Sisson to Upton was put into effect in June, 1907, and applicant claims that the discrimination in favor of shipments from Sisson to Upton as against the shipments from Sisson to Barnard began at that time and continued until August 21, 1911, when the rate of $3.00 per car became effective on shipments from Sisson to Barnard, but in the claim for reparation applicant includes only shipments which moved since February 10, 1911, and has filed 356 freight bills as evidence that 356 cars have moved under the alleged discriminatory rate since that date. On said 356 cars applicant paid as is shown by freight bills, two thousand nine hundred sixty-four and 55/100 (2,964.55) dollars, whereas applicant alleges that the amount collected should have been $3.00 per car or ten hundred and sixty-eight (1068) dollars, and now asks reparation for the difference between that sum and the amount actually paid or one thousand eight hundred ninety-six and 55/100 (1,896.55) dollars.

The testimony in addition to showing that the distance from Sisson to Barnard is but little over half of the distance from Sisson to Upton shows that the transportation in each instance was under substantially similar circumstances and conditions, in that as to all shipments the lumber from which boxes were made was received from the McCloud River Railroad Company, and that after the boxes were manufactured either at Barnard or at Upton they afforded to the Southern Pacific Company a line haul on shipments to destination.

Defendant admits that the rate of 40 cents per net ton subject to minimum of 15 tons was charged on shipments from Sisson to Barnard until the rate of $3.00 per car was put in effect August 21, 1911, and that from June, 1907, to date the rate from Sisson to Upton has been and is $3.00 per car but denies that there was any discrimination in these rates and justifies the difference by alleging that the McCloud River Railroad Company originally connected with the Southern Pacific Company at Upton and that during the time when that condition existed the manufacturers at Upton received their lumber from the McCloud River Railroad Company without additional charge other than the charges assessed by said McCloud River Railroad Company.

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That in June, 1907, the McCloud River Railroad Company tore up its tracks from Burt on its line to Upton and built a line from Burt to Sisson, as a result of which manufacturers at Upton thereafter had to pay for transporting their lumber from Sisson to Upton and defendant alleges that in view of this condition it established the rate of $3.00 per car from Sisson to Upton.

Defendant further alleges that its rates questioned in this proceeding were not unreasonable, unjust or discriminatory.

Defendant further alleges that a large portion of the shipments upon which reparation is claimed moved prior to October 10, 1911, and that on such shipments the Commission is without power or jurisdiction to award reparation.

Considering first the question of discrimination, the Commission is of the opinion that the charging of 40 cents per net ton with minimum of 15 tons or from $6.00 to $8.50 per car from Sisson to Barnard, a distance of 1 3/10 miles, and the charge of $3.00 per car from Sisson to Upton, a distance of 2 4/10 miles, is a discrimination in favor of the Sisson to Upton shipments. As shown by the testimony the shipments moved in each instance under substantially similar circumstances and conditions, the advantage if anything, being in favor of the Sisson to Barnard shipments for the reason that the boxes manufactured at both Barnard and Upton are moved south over defendant's line to ultimate destination so that on the boxes manufactured at Upton there was a back haul from Upton to Sisson while on those manufactured at Barnard no such condition obtained.

The Southern Pacific Company was in no way responsible for the action of the McCloud River Railroad Company in tearing up tracks Burt to Upton and constructing a new line Burt to Sisson. This having been done, the duty of the Southern Pacific Company was to establish just and reasonable rates for transportation of lumber Sisson to Upton. A rate of $3.00 per car was published which was admitted by witness for defendant to be reasonable considering the fact that the manufactured products were reshipped from Upton to consuming markets via lines of defendant.

The same conditions obtained with reference to shipments from Sisson to Barnard, and it is difficult to understand by what process of reasoning it can be alleged that a rate of $3.00 per car is reasonable from Sisson to Upton, 2 4/10 miles, while 40 cents per ton or from $6.00 to $8.50 per car is reasonable from Sisson to Barnard, 1 3/10 miles, with movements being under similar circumstances and conditions.

The practice of filing claims for reparation after a carrier has voluntarily reduced its rate is deprecated by this Commission. In the multitude of rates which railroads find it necessary to make in the handling

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of traffic it is unreasonable to suppose that they will not at times recognize the justice of reducing rates, something which they should be encouraged in rather than discouraged by the filing of suits for reparation after a rate has been voluntarily reduced; but as we have frequently stated, each case must be decided upon the facts existing in that particular case and in the case at bar, we are of the opinion that reparation should be awarded applicant on the grounds of discrimination as above set forth and for the further reason that the rate of 40 cents per net ton with minimum of 15 tons was unreasonably high.

As to defendant's contention that this Commission has no jurisdiction to award reparation on shipments which moved prior to October 10, 1911: This same point was raised in the case of *Scott, Magner & Miller* vs. *The Southern Pacific Company,* Case No. 222, and decided by this Commission on January 29, 1912. We quote from page 2 of that decision.

> "The defendants' first contention we consider to be without merit. Section 21 of article XII of the constitution of this State, as amended on October 10, 1911, reads in part as follows:
>
> " 'Nothing herein contained shall be construed to prevent the railroad commission from ordering and compelling any railroad or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provided no discrimination will result from such reparation.'
>
> "That a shipper's rights were violated even before October 10, 1911, by the imposition by a carrier of an excessive or discriminatory charge is clear. Excessive charges were forbidden by common law (see *Hutchinson, Carriers,* 3d ed. paragraph 521; *Texas and Pacific Railway Company* vs. *Abilene Cotton Oil Company,* 204 U. S. 426). Charges in violation of the long and short haul clause and discriminatory charges were forbidden by section 21 of article XIII of the constitution and by statute. On October 10, 1911, the new remedy of a proceeding before the Railroad Commission attached to any such right as had not been barred by the statute of limitations. While it is familiar learning that a statute creating a right or penalty is not to be so construed as to have a retroactive operation, it is clear that the state can at any time create an additional remedy to apply to an existing right. To this effect see *Chapman* vs. *State of California,* 104 Cal. 690; *Teralto Land Co.* vs. *Shaffer,* 115 Cal. 518; *Melvin* vs. *State,* 121 Cal. 16; *Denning* vs. *State,* 123 Cal. 316, 319.
>
> "There can be no question, under these authorities, that the new remedy provided by section 21 of article XII of the constitution attached to such rights as were still alive on October 10, 1911.
>
> "The next question to be considered is whether the shipper's

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rights on the claims which are the subject of this proceeding were still alive on October 10, 1911. On March 19, 1909, the so-called Wright Railroad Commission Act became effective. That act, in section 21, thereof, provided that shippers having claims against a railroad or other transportation company should first present them to the Railroad Commission, suit to be thereafter brought in the Superior Court on the Commission's award, in case the defendant refused to pay the award. Section 21 further provided a one year period for the limitation of actions, in the following language:

"'All complaints for the recovering of damages shall be filed with the Commission within one year from the time the cause of action accrues and not after * * *.'"

"The effect of this provision is that all causes of action which accrued more than one year prior to February 10, 1911, on which date the Wright Act was repealed, were barred by the provisions of that act, nor did the enactment of the present Railroad Commission Act remove the bar. Although there has been considerable conflict of authority in other states, the Supreme Court of California has uniformly held that if the bar of the statute of limitations has once fallen, the right itself has thereby become extinguished, and cannot be revived by a subsequent new statute of limitations: *Billings* vs. *Hall,* 7 Cal. 1; *Swamp Land District* vs. *Glide,* 112 Cal. 85; *Weldon* vs. *Rogers,* 151 Cal. 432; *Doehle* vs. *Phillips,* 151 Cal. 488, 492. It may be well to note also, in this connection, that the present Railroad Commission Act, in repealing the Wright Act, made no attempt to remove any bar which had theretofore fallen, but confined itself (see chapter 17, Laws of 1911, section 48) expressly to 'actions or proceedings * * * involving a violation of any of the provisions of *this* act.'"

It is therefore the judgment of this Commission that claims for reparation which accrued prior to February 10, 1910, are barred by the provisions of the Wright Act, but that claims for reparation which have accrued since February 10, 1910, are alive and reparation may be awarded thereon.

I therefore recommend that an order issue awarding applicant reparation on all claims comprehended in this case which accrued after February 10, 1910.

ORDER.

Whereas the Pioneer Box Company, a corporation, existing under and by virtue of the laws of California, has filed a complaint before the Railroad Commission of the State of California asking for reparation on certain shipments of lumber from Sisson, California, to Barnard, California, a distance of 1 3/10 miles, said shipments having moved at a rate of 40 cents per net ton, minimum rate of 15 tons; and

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Whereas complainant alleges that said rate paid on said shipments was discriminatory as compared with the rate of $3.00 per car charged by defendant on shipments of lumber from Sisson to Upton, a distance of 2 4/10 miles, such shipments in each instance being under substantially similar circumstances and conditions, and also that said rate of 40 cents per net ton, minimum carload, weight 15 tons, was extortionate and unreasonable in and of itself; and

Whereas after due consideration this Commission is of the opinion that the charging of 40 cents per net ton with minimum rate of 15 tons per car from Sisson to Barnard by defendant was discriminatory as compared with the charge of $3.00 per car on shipments from Sisson to Upton by defendant, and that the said rate of 40 cents per net ton from Sisson to Barnard was unreasonably high; and

Whereas this Commission is of the opinion as expressed in this decision and in the decision in Case No. 222 that the statute of limitations does not bar the awarding of reparation where no discrimination results from such award on shipments moving after February 10, 1910; now, therefore,

It is hereby ordered that the complainant be awarded and the defendant pay to complainant reparation of the difference between 40 cents per net ton with 15 tons carload minimum and $3.00 per car on all shipments comprehended in this case moving after February 10, 1910, such shipments being herein set forth as follows:

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
April 7, 1910	841	$3 00	$8 34	$5 34
April 7, 1910	842	3 00	8 38	5 38
April 7, 1910	843	3 00	7 28	4 28
April 7, 1910	844	3 00	8 34	5 34
April 7, 1910	850	3 00	8 38	5 38
April 7, 1910	851	3 00	8 14	5 14
April 8, 1910	867	3 00	8 00	5 00
April 8, 1910	866	3 00	8 14	5 14
April 11, 1910	896	3 00	8 76	5 76
April 11, 1910	895	3 00	8 80	5 80
April 11, 1910	894	3 00	8 56	5 56
April 11, 1910	893	3 00	8 64	5 64
April 12, 1910	909	3 00	8 72	5 72
April 12, 1910	910	3 00	9 66	6 66
April 14, 1910	932	3 00	8 90	5 90
April 14, 1910	933	3 00	9 18	5 18
April 14, 1910	934	3 00	8 78	5 78
April 14, 1910	935	3 00	8 64	5 64
April 15, 1910	949	3 00	7 54	4 54
April 15, 1910	950	3 00	8 64	5 64
April 15, 1910	951	3 00	8 40	5 40
April 18, 1910	984	3 00	8 40	5 40
April 18, 1910	985	3 00	7 92	4 92
April 18, 1910	986	3 00	8 70	5 70
April 18, 1910	987	3 00	8 94	5 94
April 19, 1910	1004	3 00	8 76	5 76
April 20, 1910	1017	3 00	7 06	4 06

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Shipments.

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
April 20, 1910	1016	$3 00	$7 24	$4 24
April 20, 1910	1015	3 00	7 12	4 12
April 21, 1910	1034	3 00	7 96	4 96
April 22, 1910	1056	3 00	8 02	5 02
April 22, 1910	1057	3 00	8 28	5 28
April 23, 1910	1079	3 00	8 46	5 46
April 25, 1910	1107	3 00	7 40	4 40
April 25, 1910	1108	3 00	8 00	5 00
April 26, 1910	1121	3 00	8 42	5 42
April 26, 1910	1122	3 00	8 06	5 06
April 26, 1910	1123	3 00	8 16	5 16
April 27, 1910	1150	3 00	8 10	5 10
April 27, 1910	1149	3 00	7 98	4 98
April 22, 1910	1058	3 00	7 84	4 84
April 28, 1910	1163	3 00	8 04	5 04
April 28, 1910	1164	3 00	7 98	4 98
April 29, 1910	1188	3 00	7 78	4 78
April 29, 1910	1187	3 00	8 46	5 46
April 30, 1910	1210	3 00	8 00	5 00
May 2, 1910	1222	3 00	7 66	4 66
May 3, 1910	1245	3 00	7 92	4 92
May 2, 1910	1223	3 00	8 08	5 08
May 3, 1910	1244	3 00	8 42	5 42
May 4, 1910	1259	3 00	8 80	5 80
May 5, 1910	1274	3 00	8 66	5 66
May 5, 1910	1275	3 00	8 60	5 60
May 6, 1910	1310	3 00	8 90	5 90
May 6, 1910	1309	3 00	8 28	5 28
May 7, 1910	1331	3 00	8 50	5 50
May 7, 1910	1330	3 00	8 50	5 50
May 9, 1910	1367	3 00	8 54	5 54
April 9, 1910	1366	3 00	8 40	5 40
May 10, 1910	1387	3 00	8 46	5 46
May 11, 1910	1405	3 00	8 02	5 02
May 12, 1910	1424	3 00	8 90	5 90
May 12, 1910	1423	3 00	8 54	5 54
May 13, 1910	1443	3 00	8 16	5 16
May 13, 1910	1441	3 00	8 24	5 24
May 13, 1910	1442	3 00	8 60	5 60
May 14, 1910	1486	3 00	8 32	5 32
April 14, 1910	1485	3 00	8 74	5 74
May 16, 1910	1491	3 00	8 42	5 42
May 16 1910	1490	3 00	7 76	4 76
May 16, 1910	1489	3 00	8 96	5 96
May 17, 1910	1510	3 00	8 38	5 38
May 17, 1910	1509	3 00	8 36	5 36
May 17, 1910	1508	3 00	8 00	5 00
May 19, 1910	1547	3 00	8 66	5 66
May 19, 1910	1553	3 00	8 84	5 84
May 20, 1910	1568	3 00	8 26	5 26
May 20, 1910	1567	3 00	8 70	5 70
May 20, 1910	1560	3 00	8 84	5 84
May 20, 1910	1565	3 00	8 26	5 26
May 21, 1910	1596	3 00	8 24	5 24
May 21, 1910	1597	3 00	8 32	5 32
May 21, 1910	1598	3 00	7 85	4 85
May 24, 1910	1636	3 00	8 10	5 10
May 25, 1910	1658	3 00	8 50	5 50
May 25, 1910	1659	3 00	8 10	5 10
May 26, 1910	1683	3 00	7 86	4 86
May 27, 1910	1712	3 00	8 40	5 40
May 27, 1910	1713	3 00	7 78	4 78

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Shipments—Continued.

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
May 28, 1910	1726	$3 00	$8 08	$5 08
May 28, 1910	1726	3 00	8 08	5 08
May 28, 1910	1727	3 00	8 06	5 06
May 30, 1910	1741	3 00	7 96	4 96
May 30, 1910	1742	3 00	8 16	5 16
June 1, 1910	1776	3 00	7 60	4 60
June 1, 1910	1775	3 00	8 14	5 14
June 1, 1910	1774	3 00	8 60	5 60
June 2, 1910	1809	3 00	8 06	5 06
June 2, 1910	1810	3 00	8 32	5 32
June 3, 1910	1829	3 00	8 34	5 34
June 3, 1910	1828	3 00	8 04	5 04
June 4, 1910	1838	3 00	8 38	5 38
June 4, 1910	1837	3 00	8 52	5 52
June 6, 1910	1854	3 00	8 62	5 62
June 7, 1910	1871	3 00	8 84	5 84
June 8, 1910	1891	3 00	9 38	6 38
June 8, 1910	1890	3 00	8 68	5 68
June 9, 1910	1924	3 00	8 72	5 72
June 9, 1910	1923	3 00	8 20	5 20
June 11, 1910	1954	3 00	8 16	5 16
June 13, 1910	1979	3 00	8 76	5 76
June 13, 1910	1980	3 00	8 60	5 60
June 13, 1910	1981	3 00	8 80	5 80
June 14, 1910	2008	3 00	8 44	5 44
June 15, 1910	2025	3 00	8 66	5 66
June 15, 1910	2026	3 00	8 66	5 66
June 16, 1910	2041	3 00	8 62	5 62
June 17, 1910	2059	3 00	8 76	5 76
June 17, 1910	2060	3 00	9 48	6 48
June 17, 1910	2061	3 00	9 02	6 02
June 17, 1910	2062	3 00	8 32	5 32
June 20, 1910	2127	3 00	9 36	6 36
June 21, 1910	2148	3 00	9 40	6 40
June 21, 1910	2149	3 00	9 28	6 28
June 21, 1910	2150	3 00	9 26	6 26
June 20, 1910	2128	3 00	9 20	6 20
June 22, 1910	2166	3 00	9 18	6 18
June 23, 1910	2187	3 00	9 22	6 22
June 24, 1910	2198	3 00	9 24	6 24
June 24, 1910	2199	3 00	9 04	6 04
June 25, 1910	2223	3 00	9 24	6 24
June 28, 1910	2278	3 00	8 18	5 18
June 28, 1910	2279	3 00	9 22	6 22
June 28, 1910	2280	3 00	8 58	5 58
June 30, 1910	2316	3 00	9 42	6 42
June 30, 1910	2317	3 00	9 26	6 26
July 1, 1910	2335	3 00	9 22	6 22
July 1, 1910	2336	3 00	9 02	6 02
July 2, 1910	2350	3 00	9 20	6 20
July 2, 1910	2349	3 00	8 88	5 88
July 4, 1910	2382	3 00	9 28	6 28
July 4, 1910	2383	3 00	8 74	5 74
July 6, 1910	2395	3 00	8 88	5 88
July 6, 1910	2396	3 00	8 60	5 60
July 7, 1910	2420	3 00	9 18	6 18
July 7, 1910	2421	3 00	8 84	5 84
July 9, 1910	2455	3 00	8 46	5 46
July 11, 1910	2472	3 00	8 60	5 60
July 11, 1910	2473	3 00	8 46	5 46
July 12, 1910	2504	3 00	8 80	5 80
July 13, 1910	2528	3 00	9 10	6 10
July 13, 1910	2529	3 00	9 20	6 20

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Shipments—Continued.

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
July 14, 1910	2517	$3 00	$8 26	$5 26
July 15, 1910	2566	3 00	8 54	5 54
July 14, 1910	2567	3 00	8 74	5 74
July 16, 1910	2583	3 00	8 30	5 30
July 16, 1910	2584	3 00	8 38	5 38
July 16, 1910	2585	3 00	8 18	5 18
July 18, 1910	2618	3 00	8 44	5 44
July 19, 1910	2632	3 00	7 22	4 22
July 20, 1910	2652	3 00	7 44	4 44
July 21, 1910	2680	3 00	7 40	4 40
July 21, 1910	2681	3 00	7 38	4 38
July 23, 1910	2725	3 00	7 18	4 18
July 23, 1910	2726	3 00	7 96	4 96
July 25, 1910	2743	3 00	7 50	4 50
July 25, 1910	2744	3 00	7 78	4 78
July 26, 1910	2762	3 00	7 64	4 64
July 26, 1910	2763	3 00	7 46	4 46
July 27, 1910	2794	3 00	7 36	4 36
July 28, 1910	2089	3 00	8 00	5 00
July 28, 1910	2090	3 00	8 18	5 18
July 29, 1910	2845	3 00	8 12	5 12
July 29, 1910	2852	3 00	7 94	4 94
July 30, 1910	2875	3 00	8 20	5 20
August 1, 1910	2889	3 00	7 96	4 96
August 1, 1910	2888	3 00	8 22	5 22
August 1, 1910	2887	3 00	8 12	5 12
August 1, 1910	2886	3 00	8 06	5 06
August 2, 1910	2913	3 00	7 82	4 82
August 2, 1910	2912	3 00	8 10	5 10
August 3, 1910	2932	3 00	8 10	5 10
August 3, 1910	2933	3 00	7 98	4 98
August 4, 1910	2945	3 00	7 94	4 94
August 4, 1910	2946	3 00	7 90	4 90
August 5, 1910	2974	3 00	8 30	5 30
August 5, 1910	2975	3 00	8 28	5 28
August 6, 1910	2997	3 00	8 38	5 38
August 8, 1910	3014	3 00	8 12	5 12
August 8, 1910	3015	3 00	8 20	5 20
August 9, 1910	3041	3 00	8 22	5 22
August 9, 1910	3042	3 00	8 06	5 06
August 10, 1910	3060	3 00	8 28	5 28
August 10, 1910	3059	3 00	8 44	5 44
August 11, 1910	3092	3 00	8 24	5 24
August 11, 1910	3091	3 00	7 54	4 54
August 12, 1910	3120	3 00	7 82	4 82
August 12, 1910	3119	3 00	8 16	5 16
August 13, 1910	3143	3 00	7 96	4 96
August 13, 1910	3144	3 00	7 98	4 98
August 15, 1910	3163	3 00	8 12	5 12
August 15, 1910	3164	3 00	8 14	5 14
August 16, 1910	3186	3 00	8 20	5 20
August 16, 1910	3187	3 00	7 94	4 94
August 17, 1910	3211	3 00	8 18	5 18
August 17, 1910	3212	3 00	8 22	5 22
August 18, 1910	3229	3 00	8 50	5 50
August 18, 1910	3230	3 00	8 66	5 66
August 20, 1910	3269	3 00	8 16	5 16
August 20, 1910	3270	3 00	8 34	5 34
August 22, 1910	3295	3 00	8 32	5 32
August 22, 1910	3294	3 00	8 62	5 62
August 22, 1910	3293	3 00	8 28	5 28
August 23, 1910	3305	3 00	8 66	5 66

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Shipments—Continued.

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
August 24, 1910	3328	$3 00	$8 32	$5 32
August 24, 1910	3327	3 00	8 12	5 12
August 25, 1910	3349	3 00	8 68	5 68
August 25, 1910	3350	3 00	8 02	5 02
August 26, 1910	3384	3 00	8 36	5 36
August 26, 1910	3379	3 00	8 58	5 58
August 27, 1910	3397	3 00	8 26	5 26
August 27, 1910	3396	3 00	8 24	5 24
August 29, 1910	3423	3 00	7 92	4 92
August 29, 1910	3424	3 00	8 46	5 46
August 29, 1910	3425	3 00	8 20	5 20
August 30, 1910	3451	3 00	8 28	5 28
August 31, 1910	3471	3 00	7 10	4 10
September 1, 1910	3497	3 00	8 06	5 06
September 1, 1910	3493	3 00	8 18	5 18
September 1, 1910	3492	3 00	7 56	4 56
September 1, 1910	3495	3 00	7 58	4 58
September 1, 1910	3494	3 00	8 20	5 20
September 1, 1910	3496	3 00	8 08	5 08
September 2, 1910	3512	3 00	7 76	4 76
September 5, 1910	3549	3 00	7 74	4 74
September 5, 1910	3550	3 00	7 70	4 70
September 6, 1910	3584	3 00	7 88	4 88
September 6, 1910	3585	3 00	7 86	4 86
September 6, 1910	3613	3 00	8 40	5 40
September 9, 1910	3657	3 00	8 22	5 22
September 10, 1910	3672	3 00	8 28	5 28
September 10, 1910	3673	3 00	7 84	4 84
September 12, 1910	3695	3 00	8 04	5 04
September 14, 1910	3752	3 00	7 98	4 98
September 14, 1910	3751	3 00	7 76	4 76
September 15, 1910	3773	3 00	7 82	4 82
September 15, 1910	3774	3 00	6 68	3 68
September 17, 1910	3815	3 00	8 10	5 10
September 17, 1910	3816	3 00	8 36	5 36
April 27, 1911	1065	3 00	8 24	5 24
April 27, 1911	1064	3 00	7 76	4 76
May 2, 1911	1132	3 00	8 18	5 18
May 2, 1911	1131	3 00	8 44	5 44
May 3, 1911	1151	3 00	8 40	5 40
May 4, 1911	1167	3 00	7 80	4 80
May 6, 1911	1206	3 00	7 90	4 90
May 8, 1911	1227	3 00	7 92	4 92
May 9, 1911	1249	3 00	7 84	4 84
May 10, 1911	1259	3 00	8 10	5 10
May 11, 1911	1275	3 00	8 06	5 06
May 12, 1911	1290	3 00	7 86	4 86
May 15, 1911	1326	3 00	7 36	4 36
May 15, 1911	1325	3 00	6 80	3 80
May 17, 1911	1362	3 00	6 70	3 70
May 19, 1911	1384	3 00	6 66	3 66
May 20, 1911	1407	3 00	6 62	3 62
June 2, 1911	1605	3 60	7 58	4 58
June 6, 1911	1655	3 00	9 08	6 08
June 7, 1911	1670	3 00	8 72	5 72
June 8, 1911	1688	3 00	9 06	6 06
June 10, 1911	1739	3 00	7 84	4 84
June 10, 1911	1728	3 00	8 76	5 76
June 10, 1911	1727	3 00	9 12	6 12
June 12, 1911	1750	3 00	6 62	3 62
June 13, 1911	1773	3 00	9 70	6 70

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Shipments—Continued.

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
June 14, 1911	1799	$3 00	$9 30	$6 30
June 14, 1911	1800	3 00	8 78	5 78
June 15, 1911	1815	3 00	8 86	5 86
June 15, 1911	1814	3 00	8 78	5 78
June 16, 1911	1831	3 00	7 38	4 38
June 17, 1911	1846	3 00	6 86	3 86
June 17, 1911	1847	3 00	7 02	4 02
June 19, 1911	1859	3 00	9 08	6 08
June 19, 1911	1860	3 00	6 74	3 74
June 19, 1911	1861	3 00	8 04	5 04
June 19, 1911	1862	3 00	8 64	5 64
June 21, 1911	1914	3 00	9 32	6 32
June 21, 1911	1913	3 00	8 70	5 70
June 22, 1911	1933	3 00	9 10	6 10
June 22, 1911	1932	3 00	7 44	4 44
June 22, 1911	1952	3 00	8 92	5 92
June 23, 1911	1954	3 00	8 44	5 44
June 24, 1911	1979	3 00	8 00	5 00
June 26, 1911	1996	3 00	7 54	4 54
June 26, 1911	1997	3 00	9 56	6 56
June 26, 1911	1998	3 00	8 86	5 86
June 27, 1911	2017	3 00	9 14	6 14
June 27, 1911	2018	3 00	9 24	6 24
June 29, 1911	2067	3 00	8 44	5 44
June 28, 1911	2046	3 00	7 42	4 42
June 29, 1911	2068	3 00	8 40	5 40
June 30, 1911	2085	3 00	7 06	4 06
June 30, 1911	2086	3 00	8 04	5 04
June 30, 1911	2087	3 00	9 30	6 30
July 1, 1911	2124	3 00	9 42	6 42
July 1, 1911	2123	3 00	9 28	6 28
July 1, 1911	2122	3 00	7 36	4 36
July 3, 1911	2139	3 00	9 72	6 72
July 3, 1911	2138	3 00	9 14	6 14
July 6, 1911	2170	3 00	8 92	5 92
July 7, 1911	2185	3 00	7 46	4 46
July 7, 1911	2186	3 00	9 46	6 46
July 8, 1911	2199	3 00	9 00	6 00
July 8, 1911	2200	3 00	7 06	4 06
July 10, 1911	2224	3 00	9 06	6 06
July 11, 1911	2257	3 00	7 44	4 44
July 12, 1911	2377	3 00	9 52	6 52
July 12, 1911	2378	3 00	7 44	4 44
July 13, 1911	2400	3 00	9 00	6 00
July 13, 1911	2399	3 00	7 34	4 34
July 13, 1911	2398	3 00	9 56	6 56
July 14, 1911	2422	3 00	7 36	4 36
July 14, 1911	2421	3 00	8 22	5 22
July 16, 1911	2445	3 00	7 68	4 68
July 17, 1911	2467	3 00	7 72	4 72
July 17, 1911	2468	3 00	9 34	6 34
July 17, 1911	2469	3 00	8 04	5 04
July 18, 1911	2482	3 00	9 34	6 34
July 19, 1911	2508	3 00	7 82	4 82
July 21, 1911	2559	3 00	8 54	5 54
July 21, 1911	2560	3 00	7 04	4 04
July 24, 1911	2604	3 00	7 50	4 50
July 24, 1911	2605	3 00	7 22	4 22
July 28, 1911	2702	3 00	8 48	5 48
July 29, 1911	2719	3 00	8 46	5 46
August 1, 1911	2764	3 00	8 24	5 24
August 3, 1911	2822	3 00	7 74	4 74

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Shipments—Continued.

Date.	Waybill number.	Rate per car.	Charges collected.	Refund.
August 7, 1911	2874	$3 00	$9 24	$6 24
August 8, 1911	2891	3 00	10 22	7 22
August 9, 1911	2906	3 00	7 74	4 74
August 9, 1911	2905	3 00	9 22	6 22
August 10, 1911	2931	3 00	8 48	5 48
August 10, 1911	2932	3 00	8 26	5 26
August 11, 1911	2947	3 00	9 01	6 01
August 12, 1911	2964	3 00	8 62	5 62
August 12, 1911	2965	3 00	8 52	5 52
August 14, 1911	2990	3 00	8 14	5 14
August 14, 1911	2991	3 00	7 98	4 98
August 14, 1911	2992	3 00	8 40	5 40
August 15, 1911	3007	3 00	8 26	5 26
August 15, 1911	3008	3 00	8 37	5 37
August 15, 1911	3026	3 00	7 92	4 92
August 16, 1911	3027	3 00	8 40	5 40
August 16, 1911	3028	3 00	7 80	4 80
August 18, 1911	3056	3 00	8 41	5 41
August 18, 1911	3055	3 00	8 26	5 26
August 18, 1911	3065	3 00	8 68	5 68
August 17, 1911	3066	3 00	8 49	5 49

amounting to one thousand eight hundred ninety-four and 25/100 (1,894.25) dollars.

The foregoing opinion and order are hereby approved and ordered filed as the decision and order of the Railroad Commission.

Dated at San Francisco, California, this 20th day of September, 1912.

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DECISION NO. 232.

IN THE MATTER OF THE APPLICATION OF INDIAN VALLEY ELECTRIC LIGHT AND POWER COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF STOCK, BONDS AND PROMISSORY NOTES.

Application No. 46.

Decided September 21, 1912.

Application for permission to issue certain shares of capital stock and certain bonds to be secured by a trust deed.

It appearing that an officer of the company had sold his individual holdings of capital stock at par for cash and that the proceeds from the sale had been used by applicant for extensions and betterments, *held*, that applicant may issue to such officer an equivalent amount of stock in lieu of his original holdings.

It appearing that applicant had sold certain shares of his capital stock under contracts calling for delivery when fully paid, *held*, the Commission will not authorize the issue of any of such stock on any contract until the subscription has been fully paid.

It appearing that applicant had entered into a contract prior to the Public Utilities Act, with a certain party for the sale of its capital stock, and had agreed to pay the commission on such sales, *held*, that applicant be authorized to issue its capital stock in a specified amount in payment of commissions on the cash received by applicant from sales.

Held, That the bond issue applied for be not permitted until applicant shall have entered into arrangements for the sale of all of such bonds.

O. C. Pratt, for applicant.

REPORT OF COMMISSION.

THIELEN, *Commissioner.*

On September 3, 1912, applicant filed with this Commission its supplemental supplementary application asking for an order of this Commission authorizing it to issue certain shares of capital stock and certain bonds, to be secured by deed of trust or mortgage, as hereinafter specified in greater detail. Applicant heretofore on August 9, 1912, filed with this Commission its amended application, asking for an order permitting the issue of stocks, bonds and promissory notes. In that matter the Commission on August 23, 1912, made its order authorizing applicant to issue its promissory note or notes, to be secured by first mortgage upon all of its property in the amount of $65,228, or such portion thereof as may be necessary for the purposes in the order specified, said notes to bear interest at a rate not to exceed 7 per cent per annum. Reference is hereby made to the opinion and order on said amended application.

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At the hearing on the supplemental supplementary application, E. O. Lindblom and Round Valley Water Company appeared and were given permission to file an answer to said supplemental supplementary application, in which answer they set forth that they are about to construct works for the generation of electrical energy in the territory which applicant intends to serve. These parties did not object to the granting of the application of the Indian Valley Electric Light and Power Company, but desired merely to notify the Commission of their project, so that the Commission might take this matter into consideration. In reaching its decision on the present application, the Commission will not refuse authority to one utility to issue securities on the ground that another utility may thereafter enter the field and compete with the existing utility in such a manner as to injure its business and impair the value of its securities. The Commission will judge each application on its merits, but will not be foreclosed by the grant to one utility of the right to issue securities, from thereafter permitting another utility of like character to enter the same field in case the public convenience and necessity demand such action. As has been frequently said by this Commission, the Commission does not guarantee any stocks, bonds or other securities which it authorizes and no order of authorization can thereafter be used to prevent this Commission from taking such action as it may consider necessary in behalf of the public convenience and necessity as affecting either the utility which secures the authorization or any other utility. The Commission, consequently, will judge of the present application on its own merits, irrespective of possible subsequent competition.

Applicant now asks authority to issue stock and bonds in the amount and for the purposes which will hereinafter appear.

In the first place, applicant alleges that subsequent to March 23, 1912, O. C. Pratt sold to various persons out of his individual holdings of capital stock in the company, 6,080 shares, which shares were transferred on the books of the company to the purchasers and for which cash in the amount of $6,080 was received by applicant. It appears from the evidence on the application and from investigations made into applicant's books by this Commission's auditor, that said sum of $6,080 has been spent by applicant for the acquisition of property and the construction, completion, extension, and improvement of applicant's facilities. Mr. Pratt sold this stock so that applicant might receive cash necessary to continue its development until it could present to this Commission a plan for financing. Mr. Pratt desires to retain his relative holding of stock in the company and applicant asks for authority to issue to him 6,080 shares of stock in lieu of that which he sold from his original holdings. Ordinarily, this Commission would insist that the public utility itself make application to the Commission

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before stock is issued, specifying the purposes for which it is desired to use the proceeds, in the manner and form prescribed by the Public Utilities Act and by the Rules of Practice and Procedure of this Commission. In this case, however, being an emergency case, I am willing to recommend the grant of the application in so far as affects the 6,080 shares of stock, particularly in view of the fact that the stock was sold at par and that the proceeds have gone into the plant.

Applicant further alleges that 13,625 shares of its capital stock have been subscribed for at par on the installment plan and that applicant has agreed to deliver certificates therefor to the respective subscribers when fully paid. These subscriptions were made between July 8, 1910, and December 27, 1911, and are fully set forth in the supplemental supplementary application on file in this proceeding. Applicant alleges that 4,464.99 shares of the stock so subscribed for have been fully paid and that there now remain 9,160.01 shares to be paid for. Applicant asks authority to issue now 4,464.99 shares and to issue hereafter 9,160.01 shares as and when final payments are made thereon. It developed at the hearing that the contracts for the subscriptions of the stock all provide that the number of shares of stock specified in the contracts shall be delivered upon payment of the entire subscription price and that none of the certificates specified in applicant's said list have been fully paid for, except a subscription for 75 shares made by O. Ellenhause on August 25, 1910. In the other cases a partial payment has been made, amounting altogether to $4,464.99. As the contracts of subscription all provide that the shares of stock shall be delivered when payment has been made, this Commission will not authorize the issue of any of the stock on any contract until the subscription has been fully paid. I recommend that applicant be authorized to issue the certificates of stock so subscribed when final payment is made on the respective subscriptions but not before, except in the case of the 75 shares fully paid up by O. Ellenhause, for which the certificate may issue now. The money derived on these subscriptions should be placed by applicant in a separate fund and should not be expended without the prior authorization of the Commission, specifying the precise purposes for which such moneys may be spent. Otherwise there will be no assurance that the moneys so secured from the sale of capital stock will be spent for purposes which are properly chargeable to capital account under the provisions of the Public Utilities Act.

Applicant further asks for authority to issue to R. A. Lang 779 shares of its capital stock, being a 10 per cent commission earned by said Lang on the sale of 7,790 shares of applicant's capital stock. An examination of applicant's books by this Commission's auditor shows that applicant entered into a contract dated April 25, 1911, with R. A. Lang for the sale of 50,000 shares of applicant's capital stock under certain terms and

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conditions specified in the contract, on which shares Lang was to receive a payment in cash and a commission of 10 per cent in stock. It appears that Lang was unable to carry out the provisions of the agreement, but that an oral arrangement was entered into by which Lang was to receive a commission of 10 per cent in stock on the moneys paid in on the stock which he sold. It appears that Lang secured contracts for the sale of 13,621 shares of applicant's stock at $1.00 per share. On these contracts applicant has received $8,237.50 in cash. I recommend that applicant be authorized to issue to Lang 824 shares of its capital stock as his commission on the cash so received on stock for which he secured the subscriptions.

Applicant further asks authority to issue bonds in an amount sufficient to secure the sum of $65,228 for the purposes specified in this Commission's order in the proceeding entitled as above, made on August 23, 1912, these purposes being the acquisition of property and the construction, completion, extension and improvement of applicant's facilities in connection with its proposed development of 500-horsepower at Seneca, and also for the discharge and lawful refunding of note of $4,000 held by International Banking Corporation and note of $3,000 held by Butte County Bank. At the original hearing in the above entitled proceeding, applicant stated that it desired to secure this money by making its promissory notes to be secured by a first mortgage on its property and the Commission accordingly made its order authorizing the execution of such notes in the amount which the Commission considered proper. Applicant now states that it desires an alternative authorization to issue bonds sufficient to raise said sum of $65,288, these bonds to be secured by a deed of trust or mortgage of applicant's entire property. A copy of a proposed deed of trust or mortgage has been filed by applicant in this proceeding. Applicant is unable to state what amount it will be able to realize from the bonds if authorized, but states that it has no doubt of its ability to dispose of the same. This Commission has hitherto authorized no bonds at a figure less than 80. If applicant's bonds net 80, it will be necessary to issue bonds of the face value of $81,535, so as to net the desired total of $65,228.

Applicant has expended for its plant and equipment since 1907 the sum of $32,968.42, together with approximately $5,000 on Seneca ditch construction. In addition to this expenditure of cash, applicant has in return for issues of stock secured additional property, including an item of $16,000 for its real estate at Greenville, and its water rights at Seneca, for which latter rights it spent $5,000 in cash and 250,998 shares of its capital stock. It is impossible to state the value of applicant's water rights at Seneca. However, disregarding these water rights, it is apparent that applicant at present has a property which is probably worth in excess of $50,000 and that as the proceeds of the proposed bonds are to

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go into the plant, with the exception of the $7,000 to be used for the payment of notes, there will be a reasonable equity behind the bonds, assuming, of course, that the venture is intelligently handled, and is a success. I recommend, however, that the authority to issue bonds in the amount of $81,535 be conditioned upon the prior execution of a trust deed or mortgage to a responsible trust company or bank and the filing of a certified copy thereof with this Commission. I recommend, further, that applicant be not for the present permitted to issue any of these bonds until it shall have entered into arrangements for the sale of all of them. Applicant should bear clearly in mind that this bond authorization is an alternative to the authorization to issue notes and that either the bonds or the notes must be issued as a whole and that it is not possible under this authorization to issue partly notes and partly bonds.

I recommend that the application be granted as modified in the foregoing opinion and submit herewith the following form of order:

ORDER.

Indian Valley Electric Light and Power Company having applied to this Commission for permission to issue a certain number of shares of capital stock, and also bonds, to be secured by a deed of trust or mortgage, the bond issue to be an alternative to the issue of promissory notes heretofore authorized by this Commission's order dated August 23, 1912, and a public hearing having been held upon said application, and it appearing to the Commission that the stock hereby authorized to be issued is to be issued for purposes which are properly capitalizable, under the provisions of section 52 of the Public Utilities Act, and that the purposes for which the bonds are to be issued, if issued, are not in whole or in part reasonably chargeable to operating expenses or income,

It is hereby ordered as follows:

1. Indian Valley Electric Light and Power Company is hereby authorized to issue 6,080 shares of its capital stock at par value of $1.00 per share to O. C. Pratt in lieu of 6,080 shares of applicant's capital stock heretofore owned by said Pratt and from the sale and transfer whereof to other parties, applicant has derived the sum of $6,080 in cash.

2. Indian Valley Electric Light and Power Company is hereby authorized to issue to O. Ellenhause 75 shares of its capital stock of the value of $1.00 each, and to the other persons who have subscribed for shares of its capital stock in accordance with the list of subscribers specified on page 3 of the supplemental supplementary application in this case, or to their assigns, by assignments of which certified copies shall first have been filed with this Commission, the number of shares of applicant's capital stock subscribed for by these persons respectively when they shall have paid to applicant the full subscription price on their

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contracts. The moneys derived by applicant from such subscriptions shall be placed by applicant in a bank, in a separate fund, and shall not be paid therefrom without the prior authorization of this Commission, specifying the purposes for which said moneys may be used.

3. Indian Valley Electric Light and Power Company is hereby authorized to issue 824 shares of its capital stock of the par value of $1.00 per share to R. A. Lang, as full compensation on account of $8,237.50, which amount of money has been paid to applicant in cash on subscriptions of its capital stock secured by Lang under an agreement by which he was to be paid a commission of 10 per cent in stock on payments made on stock subscriptions secured by him.

4. Indian Valley Electric Light and Power Company is hereby authorized to issue $81,535, face value of principal of bonds, bearing interest at the rate of 6 per cent per annum, payable semiannually, under and in pursuance of the terms of a trust deed or mortgage to be executed by applicant upon all its property, subject to the following conditions and not otherwise, to wit:

(*a*) Indian Valley Electric Light and Power Company shall sell said bonds hereby authorized so as to net the said company not less than 80 per cent of the par value of the principal thereof, besides interest accrued thereon.

(*b*) Indian Valley Electric Light and Power Company shall have no power to issue any of said bonds unless it shall first have executed to a responsible trust company or bank, a trust deed or mortgage to secure the payment of said bonds and in form satisfactory to this Commission, and until applicant shall have filed with this Commission a certified copy of such trust deed or mortgage and shall have secured from this Commission an order approving said trust deed or mortgage and specifically authorizing the issue of bonds thereunder.

(*c*) The proceeds from the sale of said bonds shall be applied only to the purposes specified in paragraph 2 of the order of this Commission heretofore and on the twenty-third day of August, 1912, made in the proceeding entitled as above, said purposes being partly for the acquisition of property and the construction, completion, extension and improvement of applicant's facilities, and partly for the discharge and lawful refunding of applicant's obligations, all as specified in said order, to which reference is hereby made.

(*d*) The authority to issue the bonds hereby authorized is given as an express alternative to the authority heretofore given by this Commission in its said order, dated August 23, 1912, to issue promissory notes in the amount of $65,228. Applicant shall have the authority to issue its promissory notes in the amount of $65,228 as specified in said order dated August 23, 1912, or the authority to issue said bonds as herein specified, for the same purposes. If applicant issues any notes, it shall

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have no authority to issue any bonds and if applicant issues bonds, it shall have no authority to issue notes. Before applicant issues either bonds or notes it shall file with this Commission its election in writing specifying whether it elects to issue the bonds or the notes.

(*e*) Applicant shall have no authority to issue any bonds hereby authorized unless and until it shall have disposed of the entire authorized issue on the terms herein authorized.

5. The authority hereby given is given on the express condition that Indian Valley Electric Light and Power Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of the stock and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the applicant shall make verified reports to the Commission, stating the sale or sales or other disposition of said stock and bonds during the previous month, the terms and conditions of such sale or disposition, the moneys realized therefrom and the use and application of such moneys, all in accordance with the provisions of this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

6. The authority hereby given to issue such stock and bonds shall apply only to stock and bonds issued by applicant on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of August, 1912.

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DECISION NO. 233.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF BONDS OF THE FACE VALUE OF SIX HUNDRED THOUSAND DOLLARS.

Application No. 140.

Decided September 21, 1912.

Application for permission to issue certain bonds and to use the proceeds for improvements and betterments. It appeared at the hearing that applicant had incurred obligations for such purposes which obligations it now proposes to refund.

Held. That where the expenditures have already been made, it still remains the Commission's ultimate purpose to see that the proceeds of such issue are spent for items which are properly chargeable to capital account.

Chickering & Gregory, for Western States Gas and Electric Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Applicant in its petition asks this Commission's authorization to issue bonds of the face value of $600,000 of its first and refunding 5 per cent gold bonds "for the purpose of paying for improvements, betterments and additions to its plant, system and equipment, already made and planned to be made, as set forth in said petition." "Exhibit I," attached to the petition, shows a total of $524,661.18 expended by applicant during the period from June 1, 1911, to March 31, 1912, at Stockton, Richmond, Eureka District, and Placerville, and a total of $646,790.30 for expenditures authorized but not paid on March 1, 1912, for gas works at Stockton, extensions to gas distributing system at Stockton, electric underground system at Stockton, additions to flume in Placerville District, Summerfield ditch in the Placerville District, distributing system at Stockton, extensions to power house at Eureka, and distributing system at Richmond. At the hearing evidence was introduced concerning expenditures made and to be made in connection with these various items, and the source from which the moneys hitherto paid on such expenditures has been derived. It became evident at the hearing that applicant's witnesses were uncertain as to the sources from which the moneys hitherto expended had been derived, and that applicant was not ready to select the items out of the total of $1,171,451.48 on which it desires to apply the proceeds of the $600,000 of bonds as to which application is made.

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Applicant accordingly thereafter filed with this Commission the following statement showing expenditures made by it at Stockton and vicinity subsequent to June 1, 1911, for which expenditures applicant now desires to reimburse itself from the proceeds of said bonds in so far as they go:

General plant—Stockton.		
Steam plant	$779 22	
Electric plant	2,360 62	
Underground conduit	20,824 52	
Street lines and wires	72,790 42	
Electric services	11,908 02	
Transformers	21,902 28	
Electric meters	23,048 42	
Arc lamps	876 91	
Electric tools and instruments	711 23	
Dam and headworks	35 01	
Tunnels, flumes and canals	20,475 73	
Electrical apparatus	1 63	
Miscellaneous equipment	2 74	
Engineering	1,285 46	
American River flume	66,217 51	
Substation equipment	13,864 61	
Transmission lines	15,518 04	
Gas plant apparatus	152,679 24	
Gas mains	23,685 43	
Gas services	14,001 95	
Gas meters	6,123 41	
Gas tools and instruments	7,004 01	
Natural gas wells	31,601 41	
Pipe lines	29,472 48	
Office furniture and fixtures	7,229 24	
Horses and vehicles	14,442 13	
		$558,841 68
Real estate and buildings.		
Real estate and buildings—electric	$12,276 60	
Real estate and buildings—gas	27,071 44	
		39,348 04
New properties.		
Stock——Citizens' Natural Gas Co.	$41,390 00	
Hotel Stockton	1,000 00	
		42,390 00
Total		$640,579 82

Applicant is unable to state the exact sources from which the moneys that were spent on the foregoing items have been derived. Where property is to be acquired or facilities are to be constructed, completed, extended or improved at a time subsequent to the hearing of the application, the Commission's authorization is to spend the proceeds of the stocks, bonds or other securities in acquiring such property or constructing, completing, extending or improving such facilities. In such cases it is relatively a simple matter to follow the proceeds of such stocks, bonds or other securities so as to make sure that such proceeds

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are used only for purposes properly chargeable, under the Public Utilities Act, to capital account. Where the expenditures, however, have already been made and the indebtedness has been incurred therefor the problem is slightly different, though the Commission's ultimate purpose to see that the proceeds are spent for items which are properly chargeable to capital account is the same. In such case, the Commission examines carefully the obligations which applicant desires to discharge so as to assure itself that the proceeds from such obligations were spent on items properly chargeable to capital account and not for items properly chargeable to operating expenses or income or other purposes which are not properly capital expenditures. Otherwise the Commission would be in the position of authorizing bonds, we will say, to take up notes given to secure funds to pay salaries or to take care of maintenance.

In the present proceeding applicant presents to the Commission the following list of obligations which it desires to refund in so far as the proceeds from the sale of said bonds will go:

Loaned by H. M. Byllesby & Co.	$184,122 00
Notes payable as follows:	
1911.	
Dec. 12—First National Bank of Stockton, on demand	40,000 00
Dec. 12—Stockton Savings and Loan Society, on demand	35,000 00
1912.	
May 6—Standard Gas and Electric Co., on demand	75,000 00
May 9—Stacy Manufacturing Co., payable November 9, 1912	5,000 00
May 9—Stacy Manufacturing Co., payable February 9, 1913	5.000 00
May 28—General Electric Co., payable September 28, 1912	13,908 22
June 6—Continental and Commercial National Bank of Chicago, on demand	288,220 00
June 6—Continental and Commercial National Bank of Chicago, payable December 6, 1912	100,000 00
Total	$746,250 22

Applicant cannot earmark the money realized from the foregoing obligations, or trace such money, except as to a portion thereof, into the specific items of expenditure shown in the statement of Stockton expenditures hereinbefore set forth, but if it had not been for such items of expenditure and the use of the money required for them these obligations would not have been required and hence, ultimately, the incurring of the obligations was required by the expenditures shown. While this statement is not as satisfactory as the Commission ordinarily requires, I am of the opinion that it is the best which can be furnished under the circumstances. It should be borne in mind in this connection, that these expenditures were incurred before the Public Utilities Act took effect and before applicant could know what the requirements of the act would be. It should also be borne in mind that under applicant's deed of trust, the trustee will deliver bonds to applicant to an amount not

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exceeding in the aggregate 75 per cent of the reasonable cost to applicant of new or additional properties purchased or acquired, or of permanent extensions, additions, improvements, or betterments made to its plants and properties. The trust deed contains a further provision that none of said bonds shall be certified or delivered until and unless the earnings of the applicant from the operation of its plants and properties, and from income upon securities owned by applicant for the period of twelve consecutive months, after deducting from the earnings all operating expenses, shall have been in each case equal to at least twice the interest charges on all underlying bonds and on all the bonds whose certification and delivery may be applied for. In view of these facts, and of the relation which exists between the value of applicant's property and the amount of bonds outstanding, I believe that the Commission will be reasonably safe in authorizing the issue of bonds as requested.

Applicant's properties are among those which are known as Byllesby properties, and applicant, in common with other Byllesby properties, pays H. M. Byllesby & Company of Chicago 7½ per cent on the cost of all construction work which it may perform, whether the services of Chicago engineers are demanded or not.

I desire to draw attention in this connection to this Commission's opinion and order in Application No. 192, being application of San Diego Consolidated Gas and Electric Company for an order authorizing the issue of bonds of the face value of $250,000. In its opinion in that case, the Commission stated that if the matter were a rate inquiry, the Commission would question very closely this item of 7½ per cent. The Commission's stand on that application applies equally to the present one.

Applicant has arranged for the sale of its bonds at 87½, together with accrued interest.

Applicant's financial condition has been considered by this Commission in connection with Application No. 66, and reference is hereby made to the opinion and order in that proceeding.

I recommend that the application be granted and submit herewith the following form of order:

ORDER.

Western States Gas and Electric Company having applied to the Railroad Commission for an order authorizing the issuance by said company of bonds to the amount of $600,000, face value, said bonds to be payable on the first day of June, 1941, and to bear interest at 5 per cent per annum, payable semiannually, and secured by a trust deed or mortgage upon all the property of the company, and a hearing having been duly held upon said application and the Commission finding that the money to be procured by the issue of said bonds is necessary to and

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reasonably required by said company for the discharge and lawful refunding of obligations of said company, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

It is hereby ordered that the Railroad Commission of the State of California hereby authorizes the issue by said Western States Gas and Electric Company of $600,000, face value, of principal of bonds of said company, maturing the first day of June, 1941, redeemable at any interest date at 105 per cent of the face amount thereof, with accrued interest to the date of redemption, and to bear interest at the rate of 5 per cent per annum, payable semiannually, under and in pursuance of the terms of the trust deed or mortgage heretofore and on the first day of June, 1911, made and executed by said Western States Gas and Electric Company to the Girard Trust Company, as trustee, said bonds to be bonds of the face value of $1,000 each, and numbered M–2425 to M–2650 inclusive, and M–3125 to M–3498 inclusive, upon the following conditions, and not otherwise:

1. Western States Gas and Electric Company shall sell the bonds hereby authorized to net said company not less than 87½ per cent of the par value of the principal thereof, besides accrued interest thereon.

2. The proceeds from the sale of said bonds shall be applied solely to the purpose of discharging or refunding all or a portion of the following obligations of the company:

Loaned by H. M. Byllesby & Co.	$184,122 00
Notes payable as follows:	
1911.	
Dec. 12—First National Bank of Stockton, on demand	40,000 00
Dec. 12—Stockton Savings and Loan Society, on demand	35,000 00
1912.	
May 6—Standard Gas and Electric Co., on demand	75,000 00
May 9—Stacy Manufacturing Co., payable November 9, 1912	5,000 00
May 9—Stacy Manufacturing Co., payable February 9, 1913	5,000 00
May 28—General Electric Co., payable September 28, 1912	13,908 22
June 6—Continental and Commercial National Bank of Chicago, on demand	288,220 00
June 6—Continental and Commercial National Bank of Chicago, payable December 6, 1912	100,000 00
Total	$746,250 22

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable, is made a part of this order.

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4. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of September, 1912.

DECISION NO. 234.

IN THE MATTER OF THE APPLICATION OF CONELAND WATER COMPANY TO ISSUE CAPITAL STOCK OF THE PAR VALUE OF ONE HUNDRED THOUSAND DOLLARS.

Application No. 180.

Decided September 21, 1912.

Application for permission to issue certain stock and to refund certain obligations with the proceeds, granted.

John J. Wells, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

This is an application of Coneland Water Company for an order authorizing it to issue one hundred thousand (100,000) shares of its capital stock, of the par value of one ($1.00) dollar per share, to refund certain obligations, as will hereafter appear with greater particularity.

Coneland Water Company is a subsidiary corporation of the Los Molinos Land Company, which company originally owned a strip of land between two and three miles wide and ten miles long, lying on the east of the Sacramento River in Tehama County, including the town of Los Molinos and the territory to the north and south thereof. Almost three fourths of the land has now been subdivided and sold. The land company contracts with the purchaser that the water company will furnish water at the rate of two ($2.00) dollars per acre. The Los Molinos Land Company also owned certain water rights on Antelope Creek and the Los Molinos River (also known as Mill Creek) and a few miles of water ditches. For the purpose of developing and selling their land, the Los Molinos Land Company organized the Coneland Water Company, the present applicant. The water company's articles of incorporation were filed in the office of the Secretary of State of California in March, 1907. The land company conveyed to the water company by

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deed dated November 8, 1907, the right to appropriate the water from said Los Molinos River and said Antelope Creek and from the other streams which flowed through or by applicant's land, as well as the right to use a few ditches which had been acquired or constructed by the land company. In return for this conveyance, applicant issued to the land company its entire authorized capital stock, consisting of one hundred thousand (100,000) shares. Mr. Thomas H. Means, the water company's vice-president and general manager, testified that it is his opinion that the property so acquired by the water company, apart from water rights, was reasonably worth between twenty and twenty-five thousand dollars. The remaining consideration for the stock was the conveyance of the water rights above referred to. Mr. Means testified that these rights were worth $25 per acre. It is difficult to say what they are worth. It is not necessary for the decision on this application to consider these water rights.

After Coneland Water Company acquired said property in 1907, it proceeded to construct ditches, flumes, dams, levees, and appurtenances so as to enable it to furnish water to the entire acreage of the Los Molinos Land Company, consisting of twelve thousand acres. This construction work was performed on money borrowed on open account from the Los Molinos Land Company. The amount of indebtedness so incurred is alleged to have been on August 8, 1912, the sum of $113,326.66. Applicant now desires to issue to Los Molinos Land Company at par one hundred thousand additional shares of stock of the par value of $1.00 per share, to take up one hundred thousand ($100,000) dollars of said indebtedness.

Applicant filed as "Exhibt B" on the hearing an inventory of its property, as follows:

Main dam, 700 cubic yards concrete, etc.	$14,000 00
Main canal, 8.7 miles at $1.25 per cubic yard	13,676 00
Canal work, 75 miles, 240,000 cubic yards at 15 cents	36,000 00
Runyon canal, 3.5 miles	4,000 00
Runyon dam	3,000 00
Antelope canal, 3.2 miles	2,400 00
705 takeouts at $12.00	8,460 00
542 checks and drops at $16.00	8,672 00
3,954 feet metallic flume at $3.00	11,862 00
125 bridges at $30.00	3,750 00
2,199 feet 28 inch and 30 inch pipe	9,895 00
River projection work	9,000 00
Levees	12,500 00
Creek cleaning	3,500 00
Engineering work	16,000 00
Maintenance and repairs	12,000 00
Water rights	26,000 00
Concrete lined ditch, 2,500 feet at 50 cents	1,250 00
Pumping plant	1,200 00
Total	$197,165 00

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The item of maintenance and repairs covers maintenance and repairs during the construction period. The item of engineering represents cost of surveying for applicant's ditches and works. The item of water rights represents the cost of the mill race and riparian rights in connection with what is known as the Old Mill property near the town of Los Molinos. The item of pumping plant represents the cost of a pumping plant which was acquired during this last season to pump water during the unusually dry season which has been experienced this year. The pump will be retained for emergency use. Most of the items in the foregoing list represent the actual cost of the work or property to applicant. The other items include work done and property purchased at least partly before the conveyance to applicant in 1907 and are the cost of present replacement, as estimated by applicant's general manager.

Of the total amount of $113,326.66 now due from applicant to Los Molinos Land Company, all except about $5,000 has gone into construction and extension items contained in the list hereinbefore given. The one hundred thousand shares of stock now to be issued will apply on the remaining $108,326.66. I find that the proceeds from said indebtedness were spent for purposes which are properly chargeable to capital account.

In addition to cancelling the claim to the extent of one hundred thousand ($100,000) dollars, the Los Molinos Land Company will also, without additional compensation, complete at its own expense applicant's irrigation system and convey to it certain additional riparian rights and the fee to the lands on which applicant's ditches and flumes are located. Estimating a width of fifty feet for ditch and flume strip, and a nominal value of fifty dollars per acre, the value of the land to be conveyed for ditch and flume line will alone amount to thirty thousand dollars. The amount of money necessary to complete applicant's irrigation system is roughly estimated at twenty-five thousand dollars. When this work has been completed and the lands and additional riparian rights have been conveyed, applicant will be in the unique position of having a property value in excess of the total par value of its then outstanding capital stock, with no bonded or other indebtedness. It is refreshing to find such a utility.

For the year 1911, during what applicant considers its construction period, applicant supplied water to 1047.70 acres of land, at two dollars per acre. Applicant will consider itself in full operation on and after January 1, 1913, and expects within a year or shortly thereafter to receive a total gross annual revenue of twenty thousand ($20,000) dollars or thereabouts.

I recommend that the application be granted and submit herewith the following form of order:

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ORDER.

Coneland Water Company having filed with the Railroad Commission its application for an order authorizing it to issue one hundred thousand shares of its capital stock of the par value of one dollar ($1.00) each for the refunding of obligations, as will hereafter appear in greater detail, and a public hearing having been held on such application, and the Commission finding that such purposes are not reasonably chargeable to operating expenses or to maintenance,

It is hereby ordered that Coneland Water Company be and the same is hereby authorized to issue one hundred thousand (100,000) shares of its capital stock of the par value of one ($1.00) dollar each on the following conditions and not otherwise, to wit:

1. Coneland Water Company shall issue such shares of capital stock so as to net said company not less than par.

2. The proceeds of said shares of capital stock shall be used by applicant in so far as they will go to discharge or refund its obligations consisting of open account with Los Molinos Land Company, in the amount of $113,326.66, incurred for the acquisition of a portion of the property and the construction, completion, extension, and improvement of a portion of the facilities specified in the list of items set forth in the opinion in this proceeding.

3. Coneland Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of the stock hereby authorized to be issued, and on or before the twenty-fifth day of each month, the applicant shall make verified reports to the Commission, stating the sale or sales or other disposition of said stock during the previous month, the terms and conditions of such sale or disposition, the moneys realized therefrom and the use and application of such moneys, all in accordance with the provisions of this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority given by this order shall extend only to stock issued on or before June 30, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of September, 1912.

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DECISION No. 235.

CITY OF BERKELEY *vs.* SOUTHERN PACIFIC COMPANY.

Case No. 282.

Decided September 11, 1912.

Complaint alleges that the depot of respondent company, located corner Delaware and Third streets, Berkeley, is grossly inadequate to handle the business, and requests the Commission, under sections 36 and 37 of the Public Utilities Act, to direct respondent to erect a new station and to fix the site thereof; also alleges that the train service of respondent is inadequate and insufficient, and requests that all state passenger trains be stopped at said station.

Held, That the present location of the depot is inconvenient and unreasonable as to passenger traffic moving over respondent's line.

Held, That the failure of respondent company to stop in West Berkeley its intrastate passenger trains has been unjust and unreasonable.

Held, That respondent shall, within time limits and in manner prescribed, construct a new depot upon a site specified by the Commission.

Held, That respondent shall, within thirty days, stop at its present depot certain specified passenger trains and shall post time tables embodying changes in the passenger train schedules.

R. C. Staats, for the city of Berkeley.

Henley C. Booth and *George D. Squires*, for the Southern Pacific Company.

REPORT OF THE COMMISSION.

THELEN and GORDON, *Commissioners.*

On June 29, 1912, the city of Berkeley filed with this Commission its complaint against the Southern Pacific Company, alleging in effect that the Southern Pacific Company is operating its main line through the western portion of the city of Berkeley over what is known as the Northern Railway, and that its facilities and service, in so far as they appertain to the city of Berkeley, are inadequate and insufficient for the following two reasons:

(1) The depot now located at the corner of Delaware and Third streets is alleged to be grossly inadequate to handle the business which should properly be transacted at said depot and the proper location for said depot is alleged to be at the corner of University avenue and Third street, University avenue being one of the main thoroughfares of the city of Berkeley, from which access may be had to all parts of the city by means of a street railroad which is now operated along and upon said avenue.

(2) Defendant is alleged to render to the city of Berkeley and its inhabitants inadequate and insufficient service in that only a few of the passenger trains of said company now stop at said station, thereby

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causing the inhabitants of said city and other persons having occasion to visit the city, desiring to travel to or from Berkeley, to go around by way of Sixteenth street, Oakland, with considerable attendant loss of time.

At the hearing stress was also laid on the fact that passengers to and from Berkeley, from and to other points in California north of Berkeley, are frequently compelled to pay up to thirty-five cents additional fare over that they would have to pay if they could use the Berkeley main line station.

The answer was filed on July 25, 1912, and denies all the material allegations of the complaint. The hearing was held in Berkeley on August 15, 1912, and the matter was then submitted subject to the filing of additional information by the Southern Pacific Company and of briefs by both parties. The information was filed by the Southern Pacific Company on August 28, 1912, and both parties thereafter waived the filing of briefs, so that the case is now ready for decision.

This proceeding is brought under section 36 of the Public Utilities Act, providing in part that the Commission may after a hearing, direct a public utility to erect such new structure or structures as may be necessary to secure adequate service and facilities and to fix the site thereof and under the provisions of section 37 of the same act, providing in part that the Commission shall have the power, after a hearing, to make an order directing a railroad corporation to stop additional trains or cars and to make any other order which the Commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

The city of Berkeley has a population of about 42,000 people and is located on San Francisco Bay, immediately north of the city of Oakland. The main line operated by the Southern Pacific Company runs from the end of the Oakland Pier through the station known as Sixteenth street, Oakland, along the water front, through the westerly portion of Berkeley, through the station called West Berkeley, northerly to Richmond and to points beyond both in northern and southern California. The only station in Berkeley at which main line passenger trains stop is a small wooden building located at Third and Delaware streets, being the depot of which the city of Berkeley complains. Defendant operates a large number of local electric trains via the station at Sixteenth street, Oakland, between the Oakland Pier and various portions of Berkeley, over what are known as the Shattuck avenue, Ellsworth street, and California Loop lines. Within the last few years the Southern Pacific Company has erected a brick and stone depot on its Shattuck avenue line at Center street, at what is known as the East Berkeley station, located possibly one block to the east of the center of population in

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Berkeley. This station, however, is used exclusively for local electric trains.

An electric street railroad system owned and operated by the San Francisco-Oakland Terminal Railways, commonly known as the "Key Route" system, serves nearly all portions of Berkeley, as well as Oakland, Alameda and adjacent territory. One of its lines runs between the Southern Pacific Company's station at East Berkeley, down University avenue to the main line tracks of the Southern Pacific Company at Third street and University avenue at a point some two blocks south of the present main line station at Third and Delaware streets. Another line, known as the Grove street line and running through what is known as South Berkeley, connects with the University avenue line at the junction of Grove and University, so that persons living in South Berkeley can readily reach Third street and University avenue by taking the Grove street electric line and transferring to the University avenue line. Also the San Pablo avenue street car line will afford a convenient means of access to and from points in West Berkeley, South Berkeley, Albany, and West Oakland to the main line depot in West Berkeley via its intersection with the University avenue line at San Pablo avenue. By means of this street railroad system it is possible for persons living in all sections of Berkeley, as well as Albany and portions of North and West Oakland to reach Third street and University avenue expeditiously.

For a number of years, citizens of Berkeley and numerous civic and commercial bodies thereof have been seeking to induce the Southern Pacific Company to erect a suitable passenger depot at Third street and University avenue and to stop all or at least most of its main line passenger trains thereat. The present depot is located at a distance of two blocks from the electric street railway line on University avenue. There are no sidewalks leading from the depot to University avenue. It has been dangerous to use the West Berkeley station at night, and numerous passengers have suffered inconvenience in doing so, especially on dark or wet nights. Realizing these conditions, the Southern Pacific Company has for several years been trying to secure a site for a new depot at Third street and University avenue, but the company has claimed that the price hitherto demanded for the particular site which it had in view has been too high. On August 14, 1912, however, being the day prior to the hearing in this case, the Southern Pacific Company bought for $11,000 a frontage of 70 feet on University avenue by a depth of 100 feet on Third street, and the adjoining piece on the east side of Third street running an additional 100 feet south on Third street and having a depth of 123 feet, so that the company has a frontage of 70 feet on University avenue and 200 feet on Third street. This prop-

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erty was secured for the purpose of building thereon a new passenger station. The defendant, however, contends that the present passenger conditions do not warrant the construction of a passenger depot at this point at the present time. The questions whether the defendant should be directed at the present time to construct a depot, and, if so, within what time the building should be completed and of what type it should be and what the outlay of money thereon should be remain open and must be passed upon by this Commission in this hearing.

Even stronger has been the request of the citizens of Berkeley that main line passenger trains stop at the West Berkeley station, so as to accommodate persons traveling to or from Berkeley over the main line passing through the West Berkeley station. While the Southern Pacific Company has from time to time directed that additional passenger trains stop at this station, only about one third of defendant's trains now stop there, either regularly or on flag. Out of twenty-three west bound main line passenger trains per day through Berkeley, only ten stop at West Berkeley. Of these ten, four stop on flag and the other six stop only to let off passengers from certain points. Of the twenty-two east bound trains each day, only seven stop at West Berkeley, and of these seven only two make regular stops, the other five stopping on flag only. Even of this number the printed time tables distributed to the public fail to show that some of these stops are made, so that the traveling public is of the impression that fewer trains stop at West Berkeley than is actually the case. We find that the Southern Pacific Company has not exercised such care as it should in printing its passenger schedules and we draw its attention to the necessity of devising some system by which passenger schedules shall be accurate and show clearly such stops as are made. Owing to the uncertainty as to which trains actually do stop at West Berkeley and to misunderstandings which passengers have had with conductors concerning stops there, fewer passengers have used the West Berkeley station than would otherwise have been the case. Attached to this opinion and order and marked respectively "Exhibit A" and "Exhibit B," are statements showing the daily east bound and daily west bound trains respectively out of and into Oakland Pier, passing through West Berkeley.

The greatest inconvenience which residents of Berkeley and persons traveling to and from this city have experienced from the conditions which have obtained at West Berkeley has been the loss of time occasioned by the necessity of traveling around via Sixteenth street, Oakland, in going to or coming from Berkeley, instead of getting on and off at West Berkeley station and using the electric street railway line in connection therewith. This is a condition which affects the inhabitants of all sections of Berkeley and portions of Albany and Oakland. The distance between the West Berkeley station and Sixteenth street, Oak-

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land, is 3.84 miles and the distance between Sixteenth street, Oakland, and the local East Berkeley station of the Southern Pacific Company at Center street is 4.45 miles. The average time which it takes to travel from the West Berkeley station to the East Berkeley station via Sixteenth street, Oakland, on the lines of the defendant company as testified to, is 33 10-13 minutes. If the passenger trains stopped at Third street and University avenue, and a street car were waiting, passengers could reach the East Berkeley station of the defendant in between nine and ten minutes, thus saving between twenty-four and twenty-five minutes. If a passenger misses the Berkeley local train at Sixteenth street, he must wait a maximum of twenty minutes during the day time up to the local which leaves San Francisco for Oakland Pier at 8.20 a. m., and a maximum of forty minutes thereafter. If a passenger alighting at Third street and University avenue should miss the street car, he need wait a maximum of only ten or eleven minutes up to about 7 o'clock at night, and thereafter a maximum of thirteen minutes. The point in Berkeley most favorable to local traffic on the Southern Pacific Company's line of railroad via Sixteenth street, Oakland, from the point of view of time is what is known as South Berkeley at the intersection of Alcatraz and Adeline streets. From this point the average time to reach the West Berkeley station via the lines of the Southern Pacific Company by way of Sixteenth street, Oakland, is twenty-nine and ten-thirteenths minutes, while it takes eighteen minutes via the Grove street and University avenue car lines to reach the intersection of Third street and University avenue. In other portions of Berkeley the difference in time is greater, as hereinbefore indicated.

Defendant claims that the amount of business performed at the West Berkeley station does not justify the stopping of additional passenger trains. In that connection, defendant filed with the Commission a statement showing the number of main line passenger trains into and out of the West Berkeley station and the revenue accruing thereon, also into and out of the East Berkeley, Berkeley–Vine street and South Berkeley stations via West Berkeley and the revenue accruing therefrom segregated as to intrastate and interstate business for the months of October, 1911, and June, 1912, a copy of which statement is attached to this opinion and marked "Exhibit C." This statement shows that there is a considerable main line passenger business done into and out of Berkeley via West Berkeley, most of which business will doubtlessly be handled through the West Berkeley station in case the passenger trains stop there. It is not at all surprising that the number of passengers getting on and off at the West Berkeley station has not been larger. The number of trains stopping there has been comparatively small, the public has been confused by erroneous time tables and by uncertainty as to whether trains do or do not stop at West Berkeley, and the location of

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the depot has been inconvenient. A number of citizens testified that if the passenger trains stopped in West Berkeley, practically all of the Berkeley main line passenger traffic moving via West Berkeley would move to and from such depot. This would result partly from the saving of time, as hereinbefore indicated, and partly from the saving of fare, as hereinafter pointed out. We are convinced that with the stoppage of trains and the construction of the depot, as hereinafter ordered, the greater portion of the Berkeley main line passenger traffic will use this depot. Very few people, in traveling, deliberately go out of their way, particularly if they can save both time and money.

We wish to point out in this connection, that the figures presented by the defendant do not accurately represent the amount of main line travel into and out of Berkeley via the West Berkeley station. We find that the amount of this travel is really considerably greater, for the reason that many passengers buy tickets to or from Sixteenth street, Oakland, instead of Berkeley, and some of them even San Francisco.

The time necessary for the additional stops at West Berkeley will be from two to five minutes. We have taken this fact into consideration in our proposed form of order in this case and find that it will be possible for defendant to take care of the additional time. While a few of the west bound trains may be obliged to lengthen their schedules to make this stop, the time of most of them between Richmond and Oakland Pier is now sufficient to permit the stop without alteration of schedule. Some of the east bound trains may have to lengthen their schedules from two to five minutes. When defendant's present improvements in the vicinity of its new station at Sixteenth street, Oakland, have been completed, main line trains going to and from Oakland Pier will no longer have to go through the present interlocking plant and across numerous tracks, so that considerable time will be saved in this manner.

An important element in this case arises from the fact that rates to and from northern and central California points from and to Berkeley are to a considerable extent in excess of the rates from and to West Berkeley, amounting to as much as 35 cents per trip. An examination of the tariffs of the Southern Pacific Company on file with this Commission shows that the fare from Sacramento to Berkeley is $2.50, and from Sacramento to the West Berkeley station, $2.40. The fare from Suisun to Berkeley is $1.50 and from Suisun to West Berkeley, $1.20. The fare from Vallejo to Berkeley is $1.00, and to West Berkeley 65 cents. The fare from a very large number of central and northern California points to Berkeley is in excess of that to West Berkeley, ranging, as has been said, from ten cents to thirty-five cents. Hence, if passenger trains stop at West Berkeley, passengers thereon can save money as well as time. The defendant cannot reasonably contend for the right to carry

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passengers around by way of Sixteenth street, Oakland, for the purpose of collecting a higher rate to and from Berkeley.

In this connection we desire to point out the fact that in cases in which a difference in fare exists between Los Angeles, Santa Barbara and other points south and different points around the bay of San Francisco, the maximum of ten cents is added to bring the passenger to Berkeley, whereas from points north the maximum is as much as thirty-five cents. It is obvious that a readjustment of the passenger fares from and to points in California, to and from Berkeley and the West Berkeley station and other points on the bay of San Francisco is necessary, and we hereby draw the attention of the Southern Pacific Company to this fact.

We find, as a fact, that the present location of defendant's main line depot in Berkeley is inconvenient and unreasonable as to the passenger traffic moving over said line, and that defendant should erect a passenger depot on the property purchased by it in Berkeley at the corner of Third street and University avenue. We find, further, that the Southern Pacific Company should erect at said point a passenger depot at a cost to it of not less than $15,000, to be either a pressed brick structure with stone trimmings, and tile roof, or similar class of construction satisfactory to this Commission, and that ninety days will be a reasonable time from the date of this order within which to submit plans for such depot and to secure the approval of the Commission, and that nine months will be a reasonable time after the approval of such plans by this Commission for the construction of such depot. We recommend to the defendant that in preparing its plans it should prepare a building of artistic appearance suitable to the size and importance of the city of Berkeley.

We find, further, that the failure of the Southern Pacific Company to stop in West Berkeley the passenger trains hereinafter directed to be stopped, and not heretofore stopped, has been unjust and unreasonable, and has resulted in a failure to give to the public the service to which it is entitled. We find, further, that the service hereinafter prescribed is a just and reasonable service. We find also that the Southern Pacific Company should stop at its present station in West Berkeley all its intrastate main line passenger trains, provided that the train known as "The Owl" shall stop on flag to take on and let off passengers. The defendant at present stops the Tonopah Express on flag and also to let off passengers from certain points and we assume that of course this practice will continue.

We are of the opinion that the Southern Pacific Company will soon realize the necessity of stopping interstate trains also. This matter is left open for further disposition.

The Southern Pacific Company should, within thirty days from the service upon it of this opinion and order, prepare and post time tables

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embodying the changes in passenger train schedules herein directed and file the same with this Commission.

The people of Berkeley have for some time been trying to eliminate the distinction between North, East, South and West Berkeley. A number of citizens have asked that the new station to be erected at Third street and University avenue be called "Berkeley—Third and University," and that the East Berkeley station be called "Berkeley—Center Street." This request seems reasonable. Compliance with it cannot injure defendant, while it will materially forward the civic unity of Berkeley. While no order is made in this matter at present, we suggest to the Southern Pacific Company that this request be complied with.

We submit herewith the following form of order:

ORDER.

The city of Berkeley having filed with this Commission its complaint against the Southern Pacific Company in the proceeding entitled as above, and the Southern Pacific Company having filed with this Commission its answer, and the public hearing having been held and evidence having been presented by both parties, and the case having been submitted and the Commission finding as a fact that the site of the present main line depot of the Southern Pacific Company at Third and Delaware streets in Berkeley is inconvenient and unreasonable as to passenger traffic moving over the defendant's main line to Berkeley, and that a convenient and reasonable site would be the property recently purchased by the Southern Pacific Company at Third street and University avenue in Berkeley, and that defendant should erect thereon a passenger depot of the cost and type hereinafter in this order specified; and the Commission further finding as a fact that the passenger service of the Southern Pacific Company at its present main line depot in Berkeley has been unjust and unreasonable in so far as it does not conform to the service hereinafter prescribed, and that the service hereinafter prescribed is just and reasonable, and basing its order on the findings contained herein and in the opinion which precedes this order,

It is hereby ordered as follows:

1. Defendant shall, within ninety days from the service on it of this order, present to the Railroad Commission for its approval, plans for a passenger depot to be built on the property recently purchased by said company at Third street and University avenue in Berkeley and hereinbefore in the opinion herein described, and shall, within nine months after the approval by this Commission of such plans, build on said property a passenger depot of pressed brick with stone trimmings, and tile roof, or of similar class of construction, and of such type as shall be approved by this Commission.

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2. Defendant shall within thirty days after the service on it of this order, stop at its present main line passenger depot at Third and Delaware streets in Berkeley, all its main line intrastate passenger trains, provided that the train known as "The Owl" shall stop on flag to take on and let off passengers. Also the defendant shall within such time prepare and post time tables embodying the changes in passenger train schedules herein directed and file the same with this Commission in conformity with this order. After defendant has completed its new passenger depot at Third street and University avenue, all such passenger trains shall stop thereat instead of its present depot at Third and Delaware streets.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of September, 1912.

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EXHIBIT "A."

SOUTHERN PACIFIC COMPANY.

**Daily East Bound Passenger Trains Out of Oakland Pier Passing through West Berkeley.*

Train No.	Leave San Francisco.	Leave Oakland Pier.	Leave Oakland, 16th st.	Arrive West Berkeley.	Arrive Port Costa.	Speed, miles per hour.	Name of train.	Destination. State or Interstate.
36	6 40 a.m.	7 05 a.m.	7 12 a.m.	F 7 20 a.m.	8 10 a.m.	25.48	Tracy and Fresno Passenger	State—Fresno.
22	7 00 a.m.	7 25 a.m.	7 32 a.m.		8 15 a.m.	33.12	Statesman	State—Sacramento.
24	7 20 a.m.	7 47 a.m.	7 54 a.m.	F 8 03 a.m.	8 55 a.m.	24.35	Tonopah Express	Interstate—Hazen, Nev.
42	7 40 a.m.	8 07 a.m.	8 14 a.m.		9 05 a.m.	33.12	Calistoga, S. R. and L. Passenger	State—Avon.
84	8 40 a.m.	9 07 a.m.	9 14 a.m.	F 9 21 a.m.	9 57 a.m.	33.12	Bakersfield Passenger	State—Bakersfield.
4	9 00 a.m.	9 30 a.m.	9 37 a.m.		10 20 a.m.	33.12	C. P. Atlantic Express	Interstate—Ogden.
46	9 40 a.m.	10 05 a.m.	10 13 a.m.	S 10 23 a.m.	11 25 a.m.	20.70	Concord Passenger	State—Avon.
2	10 20 a.m.	10 50 a.m.	10 57 a.m.		11 40 a.m.	33.12	S. F. Overland Limited	Interstate—Ogden.
8	10 40 a.m.	11 07 a.m.	11 14 a.m.		11 59 a.m.	31.84	Los Angeles Passenger	State—Los Angeles.
12	11 20 a.m.	11 47 a.m.	11 55 a.m.		12 45 p.m.	29.20	Shasta Limited	Interstate—Portland.
20	12 00 m.	12 27 p.m.	12 54 p.m.	F 12 41 p.m.	1 90 p.m.	26.29	Sacramento and M. Passenger	State—Sacramento.
18	3 00 p.m.	3 27 p.m.	3 34 p.m.	S 3 42 p.m.	4 30 p.m.	26.29	Oroville and Sac. Passenger	State—Oroville.
52	3 20 p.m.	3 47 p.m.	3 54 p.m.	F 4 01 p.m.	4 50 p.m.	26.29	Fresno Passenger	State—Fresno.
44	4 00 p.m.	4 25 p.m.	4 32 p.m.		5 28 p.m.	29.20	Calistoga, S. R. and L. Pass.	State—Avon.
50	4 40 p.m.	5 07 p.m.	5 14 p.m.		5 55 p.m.	34.50	San Joaquin Val. Flyer	State—Los Angeles.
48	5 00 p.m.	5 27 p.m.	5 34 p.m.		6 15 p.m.	34.50	El Dorado	State—Sacramento.
26	6 20 p.m.	6 47 p.m.	6 54 p.m.		7 35 p.m.	34.50	The Owl	State—Los Angeles.
6	6 40 p.m.	7 10 p.m.	7 18 p.m.		8 10 p.m.	27.60	C. P. Atlantic Express	Interstate—Ogden.
10	7 00 p.m.	7 27 p.m.	7 34 p.m.		8 20 p.m.	32.37	Fast Mail	Interstate—Ogden.
16	8 20 p.m.	8 50 p.m.	8 57 p.m.		9 40 p.m.	33.12	Oregon Express	Interstate—Portland.
86	9 40 p.m.	10 10 p.m.	10 17 p.m.		11 00 p.m.	33.12	Bakersfield Passenger	State—Bakersfield.
14	10 20 p.m.	10 50 p.m.	10 57 p.m.		11 40 p.m.	33.12	Portland Express	Interstate—Portland.

*As per Employees' Time Table No. 144—Western Division, effective June 9, 1912.
F—Stop on flag. S—Stop.

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EXHIBIT "B."

SOUTHERN PACIFIC COMPANY.

**Daily West Bound Passenger Trains Out of Oakland Pier Passing through West Berkeley.*

Train No.	Leave Port Costa.	Arrive WestBerkeley.	Arrive Oakland, 16th st.	Arrive Oakland Pier.	Arrive. San Francisco.	Speed, miles per hour.	Name of train.	Origin. State or interstate.
13	5 40 a.m.	F 6 36 a.m.	6 50 a.m.	7 00 a.m.	7 30 a.m.	20.70	San Francisco Express	Interstate—Portland.
87	6 30 a.m.		7 13 a.m.	7 20 a.m.	7 50 a.m.	33.12	Bakersfield Passenger	State—Bakersfield.
23	6 35 a.m.	X 7 20 a.m.	7 30 a.m.	7 40 a.m.	8 10 a.m.	25.47	Tonopah Express	Interstate—Hazen, Nev.
25	6 55 a.m.		7 37 a.m.	7 45 a.m.	8 10 a.m.	33.12	The Owl	State—Los Angeles.
41	7 43 a.m.	F 8 42 a.m.	8 51 a.m.	9 00 a.m.	9 30 a.m.	24.72	Santa Rosa, Cal., Passenger	State—Avon.
9	9 00 a.m.		9 50 a.m.	10 00 a.m.	10 30 a.m.	27.60	Fast Mail	Interstate—Reno, Nev.
81	9 30 a.m.		10 13 a.m.	10 20 a.m.	10 50 a.m.	33.12	Stockton Passenger	State—Stockton.
17	9 40 a.m.	F 10 23 a.m.	10 32 a.m.	10 40 a.m.	11 10 a.m.	27.60	Oroville and Sac. Passenger	State—Sacramento.
47	10 15 a.m.		10 58 a.m.	11 05 a.m.	11 30 a.m.	33.12	El Dorado	State—Chico.
49	11 25 a.m.	X 12 06 p.m.	12 12 p.m.	12 20 p.m.	12 50 p.m.	30.10	San Joaquin Val. Flyer	State—Los Angeles.
15	11 30 a.m.		12 30 p.m.	12 40 p.m.	1 10 p.m.	22.70	California Express	Interstate—Portland.
1	12 40 p.m.		1 32 p.m.	1 40 p.m.	2 10 p.m.	27.60	S. F. Overland Limited	Interstate—Ogden.
3	1 40 p.m.		2 32 p.m.	2 40 p.m.	3 10 p.m.	27.60	C. P. Pacific Express	Interstate—Ogden.
83	3 10 p.m.		3 32 p.m.	4 00 p.m.	4 30 p.m.	33.12	Bakersfield Passenger	State—Bakersfield.
43	4 30 p.m.		5 37 p.m.	5 45 p.m.	6 10 p.m.	25.47	Santa Rosa C. and C. Passenger	State—Avon.
45	4 50 p.m.	F 5 55 p.m.	6 05 p.m.	6 15 p.m.	6 50 p.m.	19.48	Livermore and S. R. Passenger	State—Avon.
21	5 25 p.m.		6 12 p.m.	6 20 p.m.	6 50 p.m.	30.10	Statesman	State—Sacramento.
7	5 38 p.m.	X 6 20 p.m.	6 30 p.m.	6 40 p.m.	7 10 p.m.	27.30	Los Angeles Express	State—Los Angeles.
19	6 15 p.m.	X 7 00 p.m.	7 10 p.m.	7 20 p.m.	7 50 p.m.	25.47	Sacramento Passenger	State—Sacramento
5	7 00 p.m.		7 53 p.m.	8 00 p.m.	8 30 p.m.	27.60	C. P. Pacific Express	Interstate—Ogden.
11	7 35 p.m.		8 17 p.m.	8 25 p.m.	8 50 p.m.	33.12	Shasta Limited	Interstate—Portland.
109	9 15 p.m.	X 9 58 p.m.	10 05 p.m.	10 15 p.m.	10 40 p.m.	27.60	Sacramento Passenger	State—Colfax.
85	10 20 p.m.	X 11 10 p.m.	11 20 p.m.	11 30 p.m.	11 49 p.m.	25.00	Tracy and Fresno Passenger	State—Fresno.

*As per Employees' Time Table No. 144—Western Division, effective June 9, 1912.
F—Stop on flag. X—Stop to let off passengers from certain points.

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"EXHIBIT C."

SOUTHERN PACIFIC COMPANY—Pacific System.

Statement showing the number of main line passengers into and out of West Berkeley and the revenue accruing thereon, also into and out of Berkeley, Berkeley Vine street, and South Berkeley via West Berkeley, and the revenue accruing thereon segregated as to intrastate and interstate business for the months of October, 1911, and June, 1912.

Business originating at West Berkeley.

	October, 1911.		June, 1912.		Total.	
	Pass.	Revenue.	Pass.	Revenue.	Pass.	Revenue.
To points in California	190	$237 20	262	$255 40	452	$492 60
To points outside California						
Total	190	$237 20	262	$255 40	452	$492 60

Business destined to West Berkeley.

From points in California	355	$370 78	349	$442 77	704	$813 55
From points outside California						
Total	355	$370 78	349	$442 77	704	$813 55

Business originating at Berkeley carried on trains via Oakland Sixteenth street, and West Berkeley.

To points in California.						
Berkeley	1,560	$3,636 32	2,256	$7,726 38	3,816	$11,362 70
South Berkeley	274	610 70	440	802 98	714	1,413 68
Vine street	127	242 05	183	351 70	310	593 75
Total	1,961	$4,489 07	2,879	$8,881 06	4,840	$13,370 13
To points outside California.						
Berkeley	175	$2,499 00	250	$2,284 01	425	$4,783 01
South Berkeley	14	155 91	2	25 00	16	180 91
Vine street	2	16 65			2	16 65
Total	191	$2,671 56	252	$2,309 01	443	$4,980 57

Business destined to Berkeley carried on trains via West Berkeley and Oakland Sixteenth street.

From points in California.						
Berkeley	1,670	$3,301 71	1,901	$4,860 57	3,571	$8,162 28
South Berkeley	28	58 80	19	68 15	47	126 95
Vine street	43	43 35	12	15 05	55	58 40
Total	1,741	$3,403 86	1,932	$4,943 77	3,673	$8,347 63

Business destined to Berkeley carried on trains via West Berkeley and Oakland Sixteenth street.

From points outside California.						
Berkeley	153	$2,485 90	52	$1,333 05	205	$3,818 95
South Berkeley						
Vine street						
Total	153	$2,485 90	52	$1,333 05	205	$3,818 95

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DECISION NO. 236.

IN THE MATTER OF THE ACTION OF THE GLENDALE CONSOLIDATED WATER COMPANY IN SHUTTING OFF WATER SUPPLY FROM INHABITANTS OF THE CITY OF SOUTH PASADENA.

Case No. 303.

Decided September 21, 1912.

Proceeding upon Commission's own motion into service supplied by water company. The Commission found that through failure of respondent to properly maintain its system, there had occurred an entire cessation of water supply.

Held, It is the duty of a public utility which has assumed the responsibilities accompanying the furnishing of people with a necessary utility, such as water, to continue furnishing that necessity, and it has no right to shut off the service for the purpose of compelling payment of a higher rate or to save itself from temporary loss.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*:

This was an investigation made and a hearing had upon the Commission's own initiative based on a written communication from Ernest V. Sutton, chairman of the board of trustees of the city of South Pasadena, which communication was received on September 17th, and stated that on September 6th the Glendale Consolidated Water Company closed down its plant and left one hundred and four consumers without water supply; and, considering this an emergency matter, a hearing was set for September 19th at 10 o'clock a. m., in South Pasadena.

At the hearing Mr. Ralph Rogers admitted, on behalf of the Glendale Consolidated Water Company, that, on September 6, 1912, and long prior thereto, said company was furnishing water to one hundred and four consumers in the city of South Pasadena. That on said last date said company ceased supplying about twenty of said consumers with water and did not again furnish them with water until ordered so to do by the Superior Court of Los Angeles County on September 17th, since which time water has been and now is being furnished them.

The testimony of a number of witnesses substantiate this admission by Mr. Rogers, except as to the number of persons whose water was shut off. The testimony of these witnesses went further and tended to show that in some respects the quality of water furnished by this company has not been good. However, for the purposes of this order the question of quality may be disregarded, as the matter to be immediately considered is the securing to the consumers of this company a continuing supply of water at least equal to that which they have been receiving.

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Mr. Rogers having admitted the cessation of the water service to the consumers above mentioned, explains the action of the company as follows:

On September 6th, he states, a break occurred in a pipe which furnished these consumers with water; that to repair this break would cost approximately one hundred ($100) dollars, and the Glendale Consolidated Water Company did not have nor could it obtain this sum of money. He insisted that, as the result of the rates for water fixed by the officials of the city of South Pasadena, the operating expenses chargeable to the South Pasadena plant exceeded the revenues derived therefrom, and that the company was insolvent and was now the defendant in a suit brought in the Superior Court of Los Angeles County to foreclose a deed of trust under which there were outstanding approximately $540,000 of bonds. Mr. Rogers admitted, however, that on being ordered to do so by the Superior Court, his company immediately supplied these consumers with water through another pipe line, and that it is possible to continue supplying them through this pipe line, but he states that a breakdown may occur at any time in the system through which they are now being supplied which would leave them without water.

The only excuse offered for the failure to at once, upon the occurrence of the break in the pipe line, supply these people with water through the source from which they are now being supplied was that the rates fixed by the officials of South Pasadena for water were so low that the plant was operated at a loss.

As the result of this action of the Glendale Company a number of people were without water for ten days, except a small amount for drinking purposes furnished by the city of South Pasadena hauled to the houses in sprinkling carts.

This action of the company was outrageous and can only be explained on the ground of the gross ignorance of its officials or the wilful disregard of their duty to the public.

It should go without saying that it is the duty of a public utility company which has assumed the responsibilities accompanying the furnishing of people with a necessary utility, such as water, to continue furnishing that necessity, and, in the event that the utility company feels that it is being unjustly treated in the matter of rates, or in any other matter, it has full opportunity for legal redress, and it has no right whatever, to shut off service to the consumers, either for the purpose of compelling payment of a higher rate or to save itself from temporary loss. Those who enter upon the business of furnishing people with a necessity of life, such as water, must realize that they have undertaken a serious and continuing responsibility, and that it does not lie within their power to avoid such responsibility and abandon the utility service at their discretion.

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While this Commission has no power to award damages in this matter, it clearly has the power to compel the continuance of the water service, and in a case of this kind it certainly will use the large powers vested in it to compel obedience to its order.

Notwithstanding that water is now being furnished these consumers under an order issued by the Superior Court of Los Angeles County, I believe it necessary that this Commission issue an order compelling the continuance of this service to the people.

It appears clearly from the testimony of Mr. Rogers and from examination of the system made by the engineer of the Commission that, to safeguard the service of water to people herein mentioned, it is necessary that the break in the pipe line system which occurred on September 6th be immediately repaired. The statement that this company, with a monthly income of approximately forty-five hundred dollars, is unable to spend one hundred dollars to make this necessary repair is so highly improbable that it should be disregarded.

I, therefore, recommend that an order issue from this Commission directing the Glendale Consolidated Water Company to continue serving all of its customers in South Pasadena with water as it is now doing, and, in addition, that it at once repair the break which occurred in its pipe line system, and in all respects that the company perform at least an equal service in the matter of furnishing water to its consumers as it was performing prior to the break in its pipe line system and discontinuance of its service to a portion of the consumers in South Pasadena.

The following form of order is herewith submitted:

ORDER.

A hearing having been duly had in the above entitled matter; and it appearing to the Commission that the Glendale Consolidated Water Company is a public utility corporation furnishing water to certain of the residents of the city of South Pasadena, Los Angeles County, California, and that on September 6th said company ceased furnishing certain of said consumers with water and failed to furnish them with water until compelled so to do on September 17th, and that said corporation is now furnishing water to said consumers under an order of the Superior Court compelling it so to do; and that said corporation may in the future again cease to serve said consumers with water; and that in order to properly, safely and surely furnish said consumers with water it is necessary that a break in a pipe line belonging to the system or plant of said company located in South Pasadena be at once repaired; now, therefore.

It is hereby ordered that the Glendale Consolidated Water Company is hereby ordered and directed to continue serving with water consumers

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in the city of South Pasadena whom it is now serving with water; and that said company at once repair the break in its pipe line system belonging to the so-called South Pasadena plant which occurred September 6, 1912, and that in all respects it furnish and continue to furnish water service to its said consumers in the city of South Pasadena at least equal to the service furnished such consumers prior to the break in its said pipe line, which occurred on September 6, 1912.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of September, 1912.

DECISION No. 237.

IN THE MATTER OF THE APPLICATION OF M. A. BURNS LUMBER COMPANY, FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS A PUBLIC HIGHWAY AT CASTLE ROCK, SHASTA COUNTY, CALIFORNIA.

Application No. 78.

Decided September 23, 1912.

REPORT OF THE COMMISSION.

M. A. Burns Lumber Company, having heretofore on May 31, 1912, filed its application for permission to construct a spur track overhead across a public highway at Castle Rock, Shasta County, California, as hereinafter indicated, and the applicant having also on September 16, 1912, filed an amended application for permission to cross said highway at grade, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the applicant has secured the necessary permit or franchise from the Board of Supervisors of Shasta County to construct said crossing; and it further appearing to the commission that it is not reasonable nor practicable to avoid a grade crossing with said public highway, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted to M. A. Burns Lumber Company to construct a spur track at grade across the public highway at Castle Rock, Shasta County, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with the

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cost of its maintenance hereafter in a good and first-class condition for the safe and convenient use of the public shall be borne by the applicant.

(2) Applicant shall provide the necessary guard rails or plank for the construction of said crossing; shall construct same of width not less than sixteen (16) feet, and with grades of approach not exceeding ten (10) per cent.

(3) This permission shall be subject to the terms and conditions of the permit or franchise granted by the board of supervisors of Shasta County to applicant on April 15, 1912.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of September, 1912.

DECISION No. 238.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC FREIGHT TARIFF BUREAU, F. W. GOMPH, AGENT, DATED JULY 22, 1912, WHEREIN REQUEST IS MADE TO MAKE THE MINIMUM CHARGE FOR ANY SINGLE LESS CARLOAD SHIPMENT OF EXPLOSIVES, AS DESCRIBED UNDER THAT HEAD IN CURRENT WESTERN CLASSIFICATION AND CURRENT EXCEPTION SHEET, DOUBLE FIRST-CLASS RATE FOR ONE HUNDRED POUNDS, BUT NOT LESS THAN ONE DOLLAR.

Application No. 203.

Decided September 25, 1912.

Held, That the rate which applicant asks permission to make on explosives would be unreasonable and prohibitory.

Held, That, in view of the expense of preparing cars to move shipments of explosives and the danger attending such movement, the present minimum of twenty-five cents with double A class rate is too small.

Geo. D. Squires and *H. G. Toll*, for Southern Pacific Company.

G. L. Goin, for Atchison, Topeka and Santa Fe Railway Company.

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F. W. Gomph, for Pacific Freight Tariff Bureau; R. H. Rennie, Sales Manager, Giant Powder Company; W. A. Simonton, Assistant Traffic Manager Du Pont Powder Company; W. W. Shilling, Giant Powder Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by the members of Pacific Freight Tariff Bureau through their agent, F. W. Gomph, to make the minimum charge for any single less carload shipment on explosives as described under that head in current Western Classification and current Exception Sheet, double first-class rate for 100 pounds, but not less than $1.00. The rate at present is double first-class on actual weight with minimum of 25 cents. The application to change it to double first-class rate for 100 pounds with minimum of $1.00 is based upon the following facts as set forth in the testimony of Geo. W. Inge of the Southern Pacific Company, testifying for applicant. Since the promulgation of regulations by the Interstate Commerce Commission, which took effect several years ago, carriers throughout the country have been making every effort to handle shipments of explosives in a safe manner to conform to the Interstate Commerce Commission's regulations. To do that they have to select the very best cars possible, usually of large capacity and to especially prepare them by making repairs, stopping up all cracks at the doors and in any other part of the car by nailing 1 by 2 or 1 by 3 strips of board all around the inside of the door and over all cracks in the car to keep out sparks, seeing that no nails are projecting anywhere into the car, in addition to which each shipment has to be segregated from other shipments and stayed or braced with heavy pieces of timber so that each shipment will remain stationary on the floor of the car.

Many other kinds of merchandise, such as oils, acids and chemicals, cannot be loaded in cars with explosives, so that witness claimed that practically explosives had to be transported exclusively in cars to themselves. Shipments from manufacturers of explosives are confined to one day in the week at which time at present six carloads are sent out, two moving to Oakland, two to Sacramento, and two to Stockton. In addition to these cars which are moved from Hercules and Giant on San Francisco Bay, one moves each week from Powder Works and occasionally one from the Trojan Powder Works and from the Clipper Gap Works; also from the large distributing magazine at Los Angeles. Two cars move each week to Los Angeles and are there transferred into fifteen or twenty other cars for shipment to final destination. At these points to which explosives move in carloads they are distributed to other cars, it usually requiring thirty to forty cars for the movements from

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San Francisco, and fifteen to twenty from Los Angeles, so that shipments may reach their destination. At such points where carload shipments from manufacturers are distributed into other cars in L. C. L. shipments, each L. C. L. shipment has to be stayed or braced as above set forth.

The witness testified that the average tonnage per week is about thirty-six tons from all the factories around San Francisco and that the total revenue was about $565, the cars making an aggregate of about 5,000 miles before such shipments reached their final destination. It was the opinion of the witness that the change asked for in the application would not result in an increase of revenue to the road with which he was connected, but he believed that the granting of the application would result in a reduction of the small shipments in a few months from 15 per cent to 20 per cent, thereby reducing the risk of explosion and other dangers attending this transportation. Witness testified that it was a well known fact that the expense of handling L. C. L. shipments of explosives is many times greater than the revenue which the railroads derive from it. I regard this as important for reasons which will appear later in this opinion.

Under cross-examination by Mr. Rennie of the Giant Powder Company and by Mr. Simonton of the Du Pont Powder Company, it was developed that while oils, acids and chemicals could not be shipped in a car with L. C. L. shipments of explosives, certain other kinds of merchandise, such as dry goods, boots, shoes, etc., could be, and it was also brought out that on shipments from factories such staying and bracing as was necessary to comply with the law was done by the shippers.

Attorney for applicant called especial attention to pamphlet No. 6 of the Bureau of Explosives, which contains a detailed description of how cars should be prepared to move explosives, and stated that said pamphlet was filed with the application. He also filed the Rules and Regulations of the Canadian Pacific Railway covering the transportation of explosives, gunpowder, etc., as an exhibit in the case, reading from same to show that the minimum charge for the transportation of single or small shipments for high explosives on that road was $5.00.

In opposition to the application, Mr. Rennie asked permission to introduce several communications received from dealers in explosives in less than carload lots, and also from many carload buyers, giving their opinion as to the effect that the granting of this application would have on their business.

With reference to the Canadian Pacific Railway tariff, Mr. Rennie explained that the government of British Columbia makes special provisions for the placing of explosives in the hands of the farming community so as to obtain the benefit of the carload prices on explosives from the manufacturers and in turn give the consumer the benefit of the

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carload cost plus actual carload freight, so that the minimum mentioned while appearing in the tariff is practically not operative.

Mr. A. W. Eibeshutz, who is the proprietor of a store in Inyo County, testified in opposition to the granting of the application, stating that it would injure his business by inducing the small buyer to purchase in larger quantities direct from the manufacturer.

After a careful consideration of the testimony and of all of its circumstances attending this application, I am convinced that this Commission cannot consent to certain features of the application. In the multitudinous rates which railroads have to make to transact their business, it is not to be expected that each particular movement considered apart by itself will yield something over the cost of carriage.

This Commission has frequently been asked by the carriers for permission to make rates which considered alone were not compensatory for the reason that the putting in of such rates would result in future movement of tonnage for the carrier. To permit carriers to make a rate of double first-class on 100 pounds of explosives with minimum of $1.00 would, I believe, in many instances result in the rate being absolutely prohibitory. The following examples will illustrate this:

The first-class rate from Giant and Hercules to Tonopah is $2.50; double first-class would be $5.00 which would be what any shipper would have to pay on any quantity less than 100 pounds if this application were granted. From Giant and Hercules to Chilcoot, double first-class would be $2.10; to Alturas, $3.14; to McCloud, $2.34; Dutch Flat, $1.36; Florisant, $1.94; Montague, $2.54; Hornbrook, $2.68; Owenyo, $4.00. On shipments from Los Angeles, double first-class would be as follows: To Daggett, $1.72; to Kelso, $2.76; to Leastalk, $3.00; to Nipton, $3.04. On the other hand it is clear to my mind that the minimum of 25 cents on actual weight is too low and in many cases does not pay the cost of preparing the car, and staying, bracing and handling the shipments.

It was testified that this tariff with a 25 cent minimum on actual weight had been in existence probably twenty years. While it has been held by the Interstate Commerce Commission that the long continuance of a rate does not offer an insuperable objection to advancing it when such advance is clearly justifiable, nevertheless the fact that the carriers have had this rate for that length of time without asking to change it is worthy of consideration. Explosives are used by miners and by farmers and such use in a majority of cases probably produces other movement of tonnage for carriers, which fact may possibly account for the long continuance of the present tariff and minimum.

Under all the circumstances of the case I have arrived at this definite conclusion.

1. That we cannot permit the rate to be double first-class on a minimum of 100 pounds.

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2. That the minimum of 25 cents on actual weight is too low, and I therefore recommend that the Pacific Freight Tariff Bureau be given permission to publish for the members of that Bureau a tariff governing the movement of explosives based on double first-class on actual weight with a minimum of 50 cents to each carrier participating in the movement, and that the following order issue:

ORDER.

Whereas the Pacific Freight Tariff Bureau through its agent, F. W. Gomph, has made request for its subscribers that the minimum charge for any single less carload shipment of explosives as described under that head in Current Western Classification and Current Exception Sheet, double first-class rate for 100 pounds but not less than $1.00; and

Whereas after a careful investigation of all the circumstances at the hearing of this case it appears to the Commission that the rate which applicant asks permission to make on explosives would be unreasonable and prohibitory; and

Whereas on the other hand it appears that considering the expense of preparing cars to move shipments of explosives and the danger attending such movement, that the present minimum of 25 cents with double first-class rate is too small.

It is hereby ordered that applicant be granted permission to publish and put into effect for the members of the Pacific Freight Tariff Bureau, a tariff governing movement of explosives as defined in Current Western Classification and Current Exception Sheet of double first-class with minimum of 50 cents for each carrier participating in the haul.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of September, 1912.

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DECISION No. 239.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY, AND OF THOMAS C. JOB, FOR AN ORDER AUTHORIZING SAID CORPORATION TO MORTGAGE ITS PLANT, SYSTEM AND PROPERTY TO SAID THOMAS C. JOB.

Application No. 211.

Decided September 25, 1912.

Application for permission to execute a mortgage to secure advances heretofore made and hereafter to be made by the mortgagee.

Held, That the Commission cannot give its approval to a preference of creditors but that this application can be granted and at the same time provision made to secure all the creditors in such a way that no preference will result.

Thomas C. Job, for applicant, C. S. McLaury, President Tulare County Power Company; C. H. Holley, Secretary Tulare County Power Company; C. P. Jackson, Director Tulare County Power Company.

James N. Hunt, for Hunt, Mirk & Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner:*

The Tulare County Power Company, hereinafter referred to as the company, and Thomas C. Job apply for an order authorizing the execution by the said company of a mortgage of all of its property to the said Thomas C. Job to secure advances heretofore made and hereafter to be made to the said company by said Thomas C. Job, in the maximum amount of one hundred and seventy-five thousand ($175,000) dollars. Inasmuch as fifty thousand ($50,000) dollars of this amount has already been advanced to the company by Mr. Job and is at present represented by ten notes of five thousand ($5,000) dollars each, which notes are now falling due, the Tulare County Power Company applies further for an order authorizing it to issue to Mr. Job two renewal notes of the amounts respectively of thirty-five thousand ($35,000) dollars and fifteen thousand ($15.000) dollars to be substituted for the ten five thousand ($5,000) dollar notes which Mr. Job now holds.

The Tulare County Power Company is organized to furnish light and power, and is at present operating under franchises granted by the county of Tulare and the cities of Tulare, Lindsay, and Exeter. On June 13, 1912, the company made application (No. 104) to this

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Commission for a certificate declaring that public convenience and necessity require the operation of rights and privileges procured to applicant under these franchises, and on July 11, 1912, this Commission made its order granting the certificate applied for.

At the present time the company has completed the construction of a 3,000-horsepower hydroelectric plant on the Tule River, and has also completed a 2,000-horsepower auxiliary steam plant in the city of Tulare. A substation has been constructed at Strathmore, and by virtue of a contract already made with the San Joaquin Light and Power Company, the Tulare County Power Company has available at this point, in case it is found necessary, a sufficient amount of additional horsepower to meet all the demands which may be made upon it. Transmission lines from the hydroelectric plant to the cities of Tulare, Lindsay, and Exeter have already been completed and power is now being furnished to these cities.

The Tulare County Power Company was incorporated on June 10, 1910, with an authorized capital stock of $1,000,000 divided into 10,000 shares of the par value of $100 each, of which 2,500 were preferred (7 per cent accumulative) and 7,500 were common. Common stock to the amount of $300 was subscribed and paid in at the time of incorporation.

The company later adopted a scheme of furnishing light and power to its stockholders at cost and certain other consumers at the rate operating in the territory. To effect this scheme the articles of incorporation have been amended so that at the present time 5,500 shares of common stock have been set aside and designated "Consumers' Common Stock," and the owner and holder of each share thereof is entitled to the privilege of the use of one horsepower of electric energy at the actual cost of production.

The Commission does not in this opinion pass on the legality or advisability of this arrangement.

At the present time the outstanding stock of the Tulare County Power Company is as follows:

Preferred	$249,850 00
Consumers' common	107,500 00
Common	200,000 00
Total	$557,350 00

The company estimates the value of its plant to be $634,723.50. The Commission has not investigated the value of the properties of the company.

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On August 31, 1912, the total indebtedness of the company was as follows:

Due on plant	$194,998 39
Bills payable for organization and operation	23,207 07
Total	$218,205 46

To offset this the company has accounts and bills receivable and cash on hand as follows:

Accounts collectible for power service	$19,506 31
Notes received in exchange for stock	93,524 80
Cash on hand	1,819 20
Total	$114,850 31

The company contemplates making a bond issue during the course of the next six months. The company is desirous, however, of immediately satisfying its creditors if possible and to that end has entered into the arrangement with Mr. Job and now applies to this Commission for its approval of this arrangement. The company is to mortgage all of its property to Mr. Job for advances to the maximum of one hundred and seventy-five thousand ($175,000) dollars. This leaves an indebtedness in the amount of $43,205.46 which is unprovided for. Mr. C. S. McLaury, president of the Tulare County Power Company, testified that he could readily take care of this $43,205.46 from the moneys which are being paid in upon the notes which the company has received for stock. It is impossible, however, to get away from the fact that this arrangement if carried out in its present form will necessarily result in preference being given to those creditors who are paid out of the $175,000 advanced under the mortgage. The Commission cannot give its approval to such a preference.

It appears to me, however, that this application can be granted and at the same time provision made to secure all the creditors in such a way that no preference will result. At the present time the Tulare County Power Company has placed as collaterial security for its obligation to Hunt, Mirk & Company, one of its creditors, a number of notes, *i. e.*, to the amount of $63,167.10, which the Tulare County Power Company has received in exchange for stock. As the account owed to Hunt, Mirk & Company is paid these collateral notes will be released, and as they are so released I recommend that they be immediately placed in the hands of a trustee to secure those creditors of the company as of August 31, 1912, who are not paid with the $175,000 advanced under the mortgage.

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I recommend that the application be granted, and submit herewith the following form of order:

ORDER.

Tulare County Power Company and Thomas C. Job, having applied to this Commission for an order authorizing the execution by said company of a mortgage of all of its property to said Thomas C. Job to secure advances heretofore made and hereafter to be made by the said Thomas C. Job to the said company to the aggregate amount of one hundred seventy-five thousand ($175,000) dollars; and the Tulare County Power Company having applied for an order authorizing it to execute to the said Thomas C. Job two renewal promissory notes in the amounts respectively of thirty-five thousand ($35,000) dollars and fifteen thousand ($15,000) dollars to be substituted for ten notes of five thousand ($5,000) dollars each already executed by the said company to the said Thomas C. Job for advances already made;

It is hereby ordered that the Tulare County Power Company be, and the same is, hereby authorized to execute to Thomas C. Job a mortgage of all of its property to secure advances heretofore made and hereafter made to the company by the said Thomas C. Job to the aggregate amount of one hundred seventy-five thousand ($175,000) dollars, such mortgage to be drafted substantially in the form and terms of the deed of mortgage attached to the application in this proceeding and marked Exhibit "G"; and the Tulare County Power Company is hereby authorized to execute to Thomas C. Job two renewal notes in the amounts respectively of thirty-five thousand ($35,000) dollars and fifteen thousand ($15,000) dollars to be substituted for ten notes of five thousand ($5,000) dollars each already executed by the said company to the said Thomas C. Job, such renewal notes to be executed in accordance with the form and terms set forth in the deed of mortgage attached to the application in this proceeding and marked Exhibit "G," subject to the following conditions and not otherwise, to wit:

1. The mortgage shall be placed in escrow and not be delivered to Thomas C. Job until he shall have placed in the hands of the trustee in escrow the sum of one hundred twenty-five thousand ($125,000) dollars, and there shall have been placed in the hands of the trustee in escrow receipts from creditors of the company as of August 31, 1912, other than the said Thomas C. Job, to the aggregate amount of one hundred twenty-five thousand ($125,000) dollars.

2. As the account which the company owes to Hunt, Mirk & Company is paid off, a proportionate amount of the notes which the company has placed in the hands of Hunt, Mirk & Company as collateral for its obligation to Hunt, Mirk & Company, shall be released and put in the hands of a trustee to secure the payment of those creditors of

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the company as of August 31, 1912, who are not paid by moneys advanced under the mortgage herein authorized.

3. The advances made under the mortgage herein authorized are to be made at a rate of interest not to exceed 7 per cent, and every note executed by the company for such advances shall be made for a term of less than one year.

4. The company shall keep separate, true, and accurate accounts showing receipt and application of the sums advanced under the mortgage herein authorized, and shall on or about the twenty-fifth day of each month make verified reports to the Commission, stating in detail the receipt and disposition of all moneys advanced under the mortgage, and giving a full description of all notes given for such advances, including renewal notes herein authorized, all in accordance with the provisions of this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

5. The authority herein granted to execute the mortgage and to issue the renewal notes shall not extend beyond April 1, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of September, 1912.

DECISION NO. 240.

PACIFIC CONSTRUCTION COMPANY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 245.

Decided September 25, 1912.

REPORT OF THE COMMISSION.

Complainant in the above entitled action having made its motion for a rehearing on this Commission's decision rendered in the above entitled case on May 9, 1912, and due consideration having been given to the matter by the Commission,

It is hereby ordered that said motion be and the same is hereby denied.

Dated at San Francisco, California, this 25th day of September, 1912.

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DECISION NO. 241.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO MOVE ITS SIDETRACK SOUTH ABOUT THIRTEEN (13) FEET AT CROSSINGS WITH FOX STREET AND FOLLETT STREET, LEMOORE, KINGS COUNTY, CALIFORNIA.

Application No. 234.

Decided September 26, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on September 21, 1912, filed with the Commission its application for permission to move its present sidetrack in the town of Lemoore, Kings County, California, south a distance of about thirteen (13) feet at crossings with Fox street and Follett street, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the applicant has secured the necessary permit from the board of trustees of the town of Lemoore, Kings County, California, to change the location of said track, and it further appearing that it is not reasonable nor practicable to avoid grade crossings with said streets and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to move its present sidetrack in the town of Lemoore, Kings County, California, in a southerly direction about thirteen (13) feet at crossings with Fox street and Follett street, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossings over the track in its new location and the cost of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall also provide the necessary plank or guardrail for said crossings and shall make same not less than forty-eight (48) feet in length. The crossings shall also be ballasted with first-class broken stone or gravel not less than six (6) inches in depth.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of September, 1912.

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DECISION No. 242.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF SIX HUNDRED THOUSAND SHARES OF COMMON STOCK AND SEVEN HUNDRED FIFTY THOUSAND DOLLARS FACE VALUE, OF BONDS.

Application No. 38.

Decided September 30, 1912.

This is a supplemental petition stating that, by reason of duplicate issues of the capital stock of one of applicant's constituent corporations, 618,413 shares of applicant's common stock should be issued to stockholders of said constituent corporation instead of 653,085 shares, and asking that the original order be amended in this respect. Also asking that applicant be permitted to issue its common stock in exchange for an equal amount of outstanding preferred stock, the latter to be returned to the treasury and canceled. Order entered granting the application and modifying the original order in other respects as specified.

Byron A. Bearce, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

SUPPLEMENTAL OPINION.

On June 29, 1912, this Commission made its order in the proceeding entitled as above, authorizing the issue by applicant of specified amounts of its capital stock and bonds for the purposes in said order set forth. Those portions of the Commission's order which referred to the amounts of capital stock which applicant might issue were as follows:

1. Applicant was authorized to issue 2,842,285 shares of its common stock of the par value of $1.00 each and 57,110 shares of its preferred stock of the same par value, share for share, to the other holders of The Tidewater and Southern Railroad Company and The Tidewater and Southern Transit Company, in exchange for the shares of stock owned by them in said respective companies. The applicant company is a consolidation of these two companies. Of the shares so authorized, certificate for 2,000,000 shares of common stock is issued for voting purposes only, and will be canceled and returned to the treasury on or before July 1, 1919. Another certificate for 188,600 shares of common was immediately returned to the treasury for cancellation, in accordance with this Commission's order, 600 shares representing shares issued to directors. This leaves 653,085 shares which, under this Commission's

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order, were to be issued to other shareholders in the two constituent companies.

2. Applicant was authorized to issue 300,000 shares of its common stock of the par value of $1.00 each, or so much thereof as may be necessary, to be delivered to persons who had made their notes to The Tidewater and Southern Railroad Company for certificates of stock in said company. It was represented to the Commission that it would take about 300,000 shares of stock to meet these obligations.

3. Applicant was authorized to issue 50,000 shares of its common capital stock to be delivered to salesmen who were alleged to have sold stock in The Tidewater and Southern Railroad Company, in return for their services, but the order distinctly specified that none of these shares were to be issued unless the person to whom they were to issue had filed with this Commission an affidavit setting forth the facts connected with the contract of agency and the sale of the stock.

4. Applicant, finally, was authorized to issue 250,000 shares of its common capital stock, to be sold so as to net the Company not less than 80 per cent of the par value thereof. When applicant filed its first monthly report under said order, it at once appeared that certain portions of the order were being violated. The Commission thereupon made its order dated September 17, 1912, reciting the facts and suspending its former order dated June 29, 1912, until applicant should have satisfied the Commission that it has made good the violations of the Commission's order, and until the further order of the Commission.

From investigations made by this Commission's department of statistics and accounts, it now appears that this Commission's original order was violated in the following respects: The 50,000 shares which were to be issued to salesmen in return for their services, were issued without filing with the Commission the affidavits which were required in this Commission's order. Again, it appears that certificates for 94,407 shares of stock were issued on notes before payment of the same, so that applicant finds itself in the position of having notes for these certificates instead of cash. It appears, further, that 22,180 shares of stock were issued without any color of authority at all.

It appears further, that applicant has been of the impression that the Commission's order would be complied with as to the 250,000 shares of stock to be sold if 80 cents per share were turned in to the treasury, even though some of this stock has been selling as high as $1.15 and $1.25 per share, whereas, as a matter of fact, applicant is entitled to pay only up to 20 per cent, if necessary, for commissions and expenses in connection with the sale of the stock.

In view of these circumstances, the Commission suspended its previous order in its entirety until the violations of that order were made good. The Commission's supervision over the issues of stocks, bonds and other

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securities of public utilities is among the most important of its functions. It is the duty of the Commission to see to it that stocks, bonds and other securities of such utilities are issued only for the purposes authorized by law and that the proceeds thereof are applied only to the purposes and in the amounts specified in the Commission's orders. This Commission will not permit any utility, either through carelessness or design, to disobey its orders, either in letter or in spirit. If the Commission becomes convinced that any of its stock and bond orders are being knowingly violated, it will at once see to it that the necessary prosecutions or other punitive proceedings are instituted. Where, however, the violations are the result of carelessness or ignorance, the Commission may, as far as it is concerned, at times resort to the less drastic procedure of revoking its order until the violations are made good, but, of course, such action on the part of the Commission does not prevent prosecutions by other officials. In any event, the Commission will insist that its orders referring to the issue of stocks, bonds and other securities, as well as its other orders, are strictly obeyed. I am convinced, after a careful investigation, that in the present case the violations have been due to carelessness and inefficient business methods, and not to a wilful intention to violate the order. Applicant has promptly taken steps to remove the violations of this Commission's order, and Mr. Byron A. Bearce, its president, has agreed to turn in to the corporation from his personal stock, a certificate for 166,587 shares, so as to fully comply with the Commission's order and fully to protect the applicant. The amount of 166,587 shares consists of 94,407 shares which were issued on notes prior to the payment of the same, 50,000 shares which were issued as commission to salesmen without the filing of the necessary affidavits, and 22,180 shares which were issued without any color of authority. Authority will hereafter be given to applicant to issue to Mr. Bearce shares of stock on notes and commissions, as paid, and included in said total of 166,587 shares.

Applicant has now filed with this Commission a supplemental application, asking for this Commission's order as follows:

The supplemental application states, that by reason of duplicate issues of capital stock of The Tidewater and Southern Railroad Company, one of applicant's constituent corporations, amounting to 29,066 shares, and an item of 5,606 shares for correction purposes, only 618,413 shares of applicant's common stock should be issued to stockholders of said constituent corporation, instead of 653,085 shares. Applicant asks that this Commission's order dated June 29, 1912, be amended in this respect, and I recommend that the application be granted in this particular.

Applicant asks that paragraphs 2 and 3 of this Commission's original order, referring to the issue of 300,000 shares and 50,000 shares respec-

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tively of its common capital stock, be modified so as to permit the sale by applicant of 384,672 shares of its capital stock so as to net applicant "not less than 80 cents on the par value of $1.00 per share; provided, further, that in no case shall the par value of the stock issued be greater than 1¼ times the amount of cash collected for the same." The amount of 384,672 shares is derived as follows: To the 34,672 shares which it now appears unnecessary to issue to the original stockholders of the constituent corporations is added the 300,000 shares to be issued to subscribers on payment of their notes and the 50,000 shares which were to be issued to applicant's salesmen for commissions. I see no objection to the granting of this portion of the application, provided that enough of these shares of stock be reserved so as to be ready for issue when the holders of the notes pay the same; and provided, further, that no commission be paid on any sales or notes on which commission has heretofore been paid; and provided, further, that on such portion of this stock as is sold, applicant be permitted to pay for commission and expenses not to exceed 20 per cent on the cash secured for such stock, the net amount of cash to be received by applicant to be in no case less than 80 cents per share. The cash derived from the sale of this stock should be used for the purposes specified in section 4(*b*) of this Commission's original order, being for the acquisition of the property and the construction, completion, extension and improvement of the facilities specified in "estimate of cost of completion of the Tidewater Southern Railway from Stockton to Turlock," which is a part of applicant's "Exhibit G" attached to the original application.

The supplemental application further asks that applicant be authorized to issue to holders of its preferred stock, amounting to $57,110, common stock in an equal amount at par, the preferred stock for which exchange is thus made to be returned to the treasury and canceled. I recommend that this portion of the application be granted.

If applicant issues all the stock which has been authorized in the original order as modified by this supplemental order, it will have outstanding common stock as follows:

2,000,000 shares—for voting purposes only,
618,413 shares—issued to stockholders of The Tidewater and Southern Railroad Company,
384,672 shares—to be issued to makers of notes and sold under this order,
250,000 shares—to be sold under paragraph 4 of this Commission's original order.
3,253,085 shares.

Applicant will also have outstanding preferred stock in the amount of 57,110 shares, which it may exchange for common stock of the same amount. If so exchanged, the total of common capital stock which applicant may issue will amount to 3,310,195 shares, of which certificate for 2,000,000 shares is for voting purposes only.

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I submit herewith the following form of order:

ORDER.

This Commission having heretofore made its order dated September 17, 1912, in the proceeding entitled as above, suspending until the further order of this Commission its previous order therein, dated June 29, 1912, and applicant having offered to make good its violations of Commission's said order dated June 29, 1912, and having filed with this Commission its supplemental application, dated September 26, 1912, and due consideration having been given by the Commission to all matters at issue,

It is hereby ordered as follows:

1. Section 1 of this Commission's order dated June 29, 1912, in so far as it authorizes applicant to issue 2,842,285 shares of its common stock of the par value of $1.00 each, is hereby amended so as to provide for the issue only of 2,807,013 shares. Said paragraph 1 of said order shall remain unaffected as regards the 57,110 shares of preferred stock, the 188,600 shares of common stock and of the certificate for 2,000,000 shares of common stock therein referred to, the effect of this amendment being, that applicant instead of having the right to issue to other stockholders of The Tidewater and Southern Railroad Company 653,085 shares of its common stock, shall have the right to issue to them only 618,413 shares of its capital stock.

2. Sections 2 and 3 of this Commission's order dated June 29, 1912, are hereby amended so as to provide that applicant may sell 384,672 shares of its common capital stock on the following conditions and not otherwise, to wit:

(*a*) Said stock shall be sold for cash only.

(*b*) Enough of said 384,672 shares shall be reserved by applicants to be issued on outstanding notes as paid.

(*c*) The proceeds from the sale of said stock shall be applied to the following purposes only: For the acquisition of the property and the construction, completion, extension and improvement of the facilities specified in "estimate of cost of completion of the Tidewater Southern Railway from Stockton to Turlock," which is a part of applicant's "Exhibit G" attached to its original application in this matter.

3. On all stock authorized to be sold, either in this order or in this Commission's order dated June 29, 1912, applicant may pay for commission and other expenses connected with the sale of said stock, an amount not to exceed in any case 20 per cent of the sale price of the stock, provided that in no case shall stock be sold so as to net applicant less than 80 cents per share in cash. In no case shall commissions be paid on any sales or notes on which commission has already been paid.

4. Applicant is hereby authorized to issue 57,110 shares of its common

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capital stock in exchange for 57,110 shares of its preferred capital stock now outstanding, share for share.

5. The effectiveness of this order and of every portion thereof is subject to the express condition precedent, that there shall first have been turned in to applicant's treasury for cancellation, certificate or certificates of its common capital stock in the amount of 166,587 shares, and that applicant's secretary shall have given to this Commission written notice that such certificates have been turned in and canceled of record on applicant's books.

6. Applicant shall keep separate, true and accurate accounts, showing the disposition made of every share of stock hereby authorized to be issued and showing the receipt and application in detail of the proceeds of all shares of stock hereby authorized to be issued and sold, and on or before the twenty-fifth day of each month, applicant shall make a verified report to the Commission, stating the sale or other disposition of such shares of stock during the preceding month, the terms and conditions of sale or other disposition, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable, is made a part of this order.

7. The authority hereby given to issue shares of stock shall apply only to shares of stock issued by applicant on or before the thirtieth day of June, 1913. If at that time any of said stock may not have been issued, applicant may make further representations to the Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1912.

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DECISION No. 243.

IN THE MATTER OF THE APPLICATION OF THE COLLINS COMMERCIAL COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 233.

Decided September 30, 1912.

REPORT OF THE COMMISSION.

The Collins Commercial Company having applied to this Commission for a certificate declaring that public convenience and necessity require the exercise of rights and privileges granted to the said company by the City of Newport Beach in a permit dated September 4, 1912, which permit gives to the said company the right to suspend, in accordance with certain conditions therein prescribed, two electric wires across the intersection of Palm street and Bay avenue, in said city of Newport Beach, and, this Commission being of the opinion that this is not a case in which a public hearing is necessary,

It is hereby declared that public convenience and necessity require the exercise by the Collins Commercial Company of the rights and privileges granted to said company by the city of Newport Beach, in a permit dated September 4, 1912.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1912.

DECISION No. 244.

CENTRAL CALIFORNIA TRACTION COMPANY *vs.* ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 250.

Decided September 30, 1912.

Complaint alleges refusal by Atchison, Topeka and Santa Fe Railway Company to enter into joint rates with complainant's interurban electric line in violation of the Constitution and the Public Utilities Act.

***Held*, That public convenience and necessity demand the establishment of a through route and joint rates for freight and a through route and joint fares for pas-**

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senger traffic between points on complainant's line north of Stockton to Sacramento, and points on respondent's line to and from certain prescribed points on respondent's line.

The meaning of section 33 of the Public Utilities Act, under which the complaint is made, discussed. When voluntarily a railway establishes a rate applicable to certain shipments, it estops itself from complaining of an order making that rate applicable to all shipments, no matter whence they arose.

Corbet & Selby, for Complainant.
E. W. Camp and *H. B. Leary,* for Defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner:*

This is an action brought by the Central California Traction Company asking for an order of this Commission establishing a through route and joint rates between the Central California Traction Company and the Atchison, Topeka and Santa Fe Railway Company.

The Central California Traction Company operates a standard gauge electric railway about 70 miles in length between the city of Stockton, San Joaquin County, and Sacramento, Sacramento County, California. The territory between Stockton and Sacramento, for the most part, is very productive and the complainant alleges that, by reason of the failure of the defendant to establish joint rates, farmers and shippers are put to great inconvenience and expense in hauling their products to the lines of the Southern Pacific Company and the Western Pacific Railway, which are located from 5 to 10 miles from the lines of the complainant. The complainant's lines run into the heart of the city of Sacramento for passenger service and complainant is in a position to make adequate deliveries of freight which it may receive for consignees in that city.

The complainant insists that public convenience and necessity require the establishment of such through route and joint rates between these lines and in support of this contention has introduced evidence tending to show that much needless expense is occasioned by shippers being compelled to ship freight and to travel over the lines of the Southern Pacific Company, which could be avoided if a through route and joint rates were established between the lines of the Central California Traction Company and the Atchison, Topeka and Santa Fe Railway Company.

The complainant further alleges that the refusal by the Atchison, Topeka and Santa Fe Railway Company to enter into joint rates with its line is in violation of section 17, article XII of the Constitution, as well as sections 17 and 22 of the Public Utilities Act. The section of the Constitution in question reads as follows:

> "Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination."

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The sections of the Public Utilities Act are somewhat broader in scope but of similar import.

It is argued by the complainant that the action of the Atchison, Topeka and Santa Fe Railway Company in establishing a through route and joint rates in connection with the Western Pacific Railway, which line parallels the lines of the Central California Traction Company from Stockton to Sacramento, places complainant herein as to the line between Sacramento and Stockton in practically the same relative position to the defendant as is the Western Pacific Railway with which it has established a through route and joint rates.

In my opinion it is not necessary to pass upon the second contention raised by the complainant as the evidence in the case renders a decision necessary aside from any consideration of discrimination. I believe that it unquestionably appears that public convenience and necessity will be subserved by the granting of at least a part of the relief prayed for by complainant. It is certainly of some convenience to the traveling and shipping public to be able to avail itself of one line of railroad which is nearer to it than another at the same rates, and a Commission such as this should always desire to convenience the public to the greatest possible extent consistent with fair dealing to the carriers.

I believe there are only three parties to be considered in this inquiry: The public, the Atchison, Topeka and Santa Fe Railway Company, and the Central California Traction Company.

As far as the public is concerned any added convenience to it over that which it at any time has will constitute public convenience and necessity, provided this added convenience does not add any burden to the utility which is required to render the additional service, in this instance, to the two railways in question, the Atchison, Topeka and Santa Fe Railway Company and the Central California Traction Company. When the added convenience is of considerable degree public convenience and necessity may require its being accorded to the public even though by so doing the utility in question is adversely affected so long as the consideration which may be exacted by the utility for the performance of the service is reasonable. In other words, what might constitute public convenience and necessity in a case where no additional burden, or a small one, is imposed upon the utility might not constitute public convenience and necessity when the added burden to the utility becomes so great as not to bear a proper relation to the amount of added convenience to the public.

In the question under consideration there is no question that there will, as to most points involved, be some convenience to some members of the public by the granting of the relief asked by complainant. The complainant in asking for the relief and offering its facilities for the performance of that part which will devolve upon it, is of course pre-

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sumed to be in at least as good a position if its complaint is sustained as it is at present.

Therefore, there only remains the condition of the Atchison, Topeka and Santa Fe Railway Company to be considered. In this regard, as far as passenger rates are concerned, the desired joint rate over the desired through route will in most instances be the sums of the locals. The extra service which will be required to be performed by the Atchison, Topeka and Santa Fe Railway in through checking of baggage and in joint sale of tickets is of course inconsiderable, and inasmuch as it is contemplated that the complainant continue the performing of the same service at the transfer point which it now performs with reference to baggage and delivery of passengers, I find that the Atchison, Topeka and Santa Fe Railway will receive in all substantial respects the same consideration for the same service when the through route and joint rates shall have been established as it now receives. Under these circumstances it certainly cannot be heard to complain that its proportion of the passenger fare is too small when the service is performed jointly with another carrier, when it amounts to exactly the same as it now exacts for the same service when performed independently.

I, therefore, find that public convenience and necessity demand the establishment of a through route and joint fares for passenger traffic over the lines of the two carriers, parties to this proceeding, under the conditions imposed in the order herein.

As regards the interchange of freight the same may be said with reference to the public and the Central California Traction Company as has already been said in connection with the interchange of passengers.

With reference to the Atchison, Topeka and Santa Fe Railway Company is seems to me that two questions must be answered:

First—Is the service which will be performed by this Company, if the through route and joint rates shall be established, one which it can legally be required to perform?

Second—If the answer of the first question be in the affirmative, is the added convenience to the public sufficient to justify this Commission deciding that the Atchison, Topeka and Santa Fe Railway Company ought to be required to perform the services which the establishment of a through route and joint rates will require of it?

Considerable difference of opinion seems to exist between the attorneys for the parties herein over the meaning of section 33 of the Public Utilities Act. The meaning of this section seems to be clear. Under it, this Commission can establish a through route and joint rates when after a hearing it is found that a public convenience and necessity exists therefor, either by reason of the fact that the rates, fares or charges in force are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate or fare exists. What are excessive and unjust rates,

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and what is an unsatisfactory or a satisfactory through route and joint rate, either or both, is for this Commission to determine at the hearing which is provided for in section 33.

Under the state of facts developed by the evidence herein, in my view of this section the Commission could order the Southern Pacific Company, if it were a party hereto, to haul freight to Stockton and turn it over to the traction company, or receive it from the traction company at Stockton under a through route and joint rate arrangement. Of course under these circumstances if the Southern Pacific's route over its own line from the originating point of the freight to its point of destination was "equally satisfactory," then the Commission would be required to give to the Southern Pacific out of the joint rate its local rate between the point of origin upon its own line and the point at which it delivered the commodity to the Central California Traction Company, or *vice versa*; and even here it would be incumbent upon the Commission to determine whether or not the Southern Pacific's route was "equally satisfactory."

I desire that it be plainly understood that I am not applying myself here to what the Commission should do under such circumstances, but merely what it would do under the law. Therefore, I am plainly of the opinion that the Commission can order a through route and joint rate from the carriers parties hereto, provided the other facts are shown in the evidence which are necessary to such order.

It is very strenuously contended by the defendant that this order cannot be made by the Commission because the amount which it will receive out of the joint rate will be less than the reasonable rate *per se* for the service performed. It is not necessary to enter into an extended discussion of the meaning of the term "reasonable rate *per se*"; as a matter of fact I do not believe that I have the ability to discuss such a question particularly since the ideas of the many able lawyers for the utilities that have argued this question before us are so at variance, but I do believe that there is sufficient in the evidence of this case properly to decide it.

A letter was introduced by complainant signed by Mr. Edward Chambers, who is Assistant Freight Traffic Manager of the defendant, which prevents Mr. Chambers at least from arguing that this is not a reasonable rate under the circumstances of the case. Of course the company may quite properly say that this does not work an estoppel upon it, but coming from a traffic man of Mr. Chambers' experience it has great weight with me as a matter of evidence. I am not at all sure that circumstances surrounding a rate should not be taken into consideration to determine whether or not it is one that a railroad can be legally forced to accord. I believe that these so-called forced and compelled rates which help to swell the income of the railroads and make

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their credit balance higher at the end of the year than it would be if such rates were not changed may under proper circumstance be forced upon a carrier who does not voluntarily assume to accord them. I believe that the principle involved is very similar to the one which allows the scale of class rates to be imposed upon a carrier requiring it to carry a ton of one commodity at a very much lower rate than it receives for another commodity carried under the same circumstances. It is not enough to say that the rate on the lower classes are made lower by reason of the quantity of freight moving thereunder, for such is not the case in very many instances. The commodity rate, of course, is the proper wholesale rate, but even here we find commodities moving in substantially equal quantities under substantially similar circumstances and conditions and the rate imposed for the service performed with reference to one commodity much in excess of the rate imposed for the same unit of the other commodity.

I do not believe it is necessary, however, to adopt the view that I have herein suggested in order to decide this case, but the defendant has so ably and extensively argued this point that I thought it should appear that its argument has been considered.

Mr. Chambers in the letter heretofore referred to writes as follows:

SAN FRANCISCO, CAL., January 22, 1912.

MR. H. A. MITCHEL,

General Manager Central California Traction Company, Shreve Building, City.

DEAR SIR: Answering your letter of January 16 asking for the establishment of through freight and passenger rates between stations upon your line and stations upon our line in California:

"Regarding passenger rates I have referred the matter to Mr. J. J. Byrne, Assistant Traffic Manager of our company with office in Los Angeles, and asked him to answer you direct.

"As to the freight rates, I appreciate the position as described in your letter. Such an arrangement in itself I am willing to admit will be of benefit to the Santa Fe lines, but joint rates with electric lines in other sections of the State would take business away from the Santa Fe lines. There are also many other reasons why it is desirable to have joint rates between electric and steam lines. In dictating our policy we must consider the entire situation.

"Therefore, we cannot see our way clear for the present at least to make through rates in connection with your company that are less than the sum of the local rates of each.

Yours very truly,

(Signed) EDWARD CHAMBERS."

Here then is the refusal by a responsible officer of the defendant to accord the relief demanded by complainant herein even though such an

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arrangement "would be of benefit to the Santa Fe lines." In this letter Mr. Chambers also by implication agrees to establish a through route and joint rates on the basis of the sum of the respective locals.

In passing it might be well to say that the attitude of the steam road toward the electric lines is not at all concurred in by this Commission, and to suggest that the Commission will order in through routes and joint rates between electric and steam roads in every instance where public convenience and necessity require it and there are not other controlling reasons preventing such action. The Commission will order in through routes and joint rates between electric lines and the Southern Pacific Company or the Western Pacific Company regardless of the desires of the Atchison, Topeka and Santa Fe. Likewise the Commission will order in through routes and joint rates in conjunction with the Santa Fe without regard to the desires of the Southern Pacific or the Western Pacific. Of course if it can be shown that the public is adequately served and that the establishing of a through route and joint rates would work an injustice even to a road which would not be a party thereto, this Commission would of course consider that circumstance very carefully, and unless controlling consideration of public convenience requires it would not even indirectly injure any carrier. But these electric lines apparently have come to stay. They usually serve territory which is not adequately served by the steam lines, and the Commission will, as I have already stated, decide every case on its merits, and Mr. Chambers' refusal to enter into an arrangement with the complainant herein because of his fear of it being used elsewhere against him, while it might avail him something as against other railroads will not avail him anything as against this Commission. Of course it may be argued that this attitude on the part of the Commission may encourage the building of electric lines into territory where they are not needed with the result that the business of the existing carriers will be divided to their injury. But it is my opinion that ordinarily these lines develop more traffic than they take from the steam roads.

Witnesses for the complainant testified that the proposed joint rates over the proposed through route, namely the rate over the Southern Pacific between the same points and the rate over the Western Pacific and Santa Fe between the same points, are reasonable rates, but I rely more strongly on the admission of Mr. Chambers and the further fact that the defendant herein has voluntarily put in joint rates with the Western Pacific which are the same as the rate of the Southern Pacific between the same points. This makes a *prima facie* case for the reasonableness of these rates as far as the defendant is concerned, and the evidence instead of rebutting the *prima facie* reasonable character of these rates helps further to establish it. When voluntarily a railway establishes a rate applicable to certain shipments "it estops itself from

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complaining of an order making that rate applicable to all shipments no matter whence they arose." (*Alabama & Vicksburg Railroad Company* vs. *Railroad Commission*, 203 U. S. 496.) And, again, in the same case: "Even if the state may not compel the railroad company to do business at a loss and conceding that the railroad company may insist as against the power of the state upon the right to establish such rates as will afford reasonable compensation for the service rendered, yet when it voluntarily establishes local rates for some shippers it cannot resist the power of the state to enforce the same rate for all."

I am aware that in this case the Supreme Court was discussing the equality of rates between shippers, but I believe the reasoning clearly applicable to a condition such as we find here. What the railroad does voluntarily it may not say was detrimental to it. When a railroad voluntarily puts in a rate that rate is as to it reasonable. If it is advantageous for the defendant to accept a certain amount for performing service in conjunction with the Western Pacific then what possible ground can it have for complaining if it has accorded to it exactly the same amount for performing exactly the same service in conjunction with the Central California Traction Company?

I believe that under the provisions of section 33 of the Public Utilities Act this Commission has the general power to grant the relief demanded herein under a proper state of facts, and I believe that if public convenience and necessity require the establishment of the through route and joint rates, that the defendant cannot urge that such rates as to it are unreasonable. I make this qualification, however, that if in the division of the joint rate which is originally a matter of agreement between the carriers, parties hereto, the Central California Traction Company insists on a division more favorable to it than the division which is accorded to the defendant in the joint rates with the Western Pacific that the defendant could not under the evidence as it exists here be required to accept such less amount, but inasmuch as only on failure to agree between the parties does this Commission have the power to force a division, I do not believe that the question of division can affect the validity of this order until the Central California Traction Company has refused voluntarily to agree to a division which will give the defendant an amount equal to that which it obtains under its agreement with the Western Pacific, and thereafter the Commission on a hearing has also refused to accord to the defendant as its division of the joint rate an account equal to that which it obtains under its arrangement with the Western Pacific. In other words, I do not believe either party to a joint rate can question the amount of the entire rate upon the ground that it is an unreasonable rate *per se*, but it is limited to questioning its division thereof in which alone it has a legal right to interest itself.

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It only remains to be determined from the evidence whether or not public convenience and necessity will be subserved by the granting of all or any part of the relief asked by the complainant. The evidence shows that Oak Park is a considerable community, now a part of the city of Sacramento, and that the lines of the complainant pass directly through it, while it is two miles from the Western Pacific station and four miles from the Southern Pacific station in Sacramento. Certainly a community as large as Oak Park should not be required to dray its freight such distances. Likewise freight will be required to be hauled or drayed from Foppiana, 4.31 miles; Youngs, 1.95 miles; Peltier, 2.87 miles; Kenefick, 6.13 miles; Galt, 4.5 miles; Harold, 4.54 miles; Valensin, 8.69 miles; Rey, 11.17 miles; Walmort, 10.22 miles; Willow, 6.28 miles; Sheldon, 4.45 miles; Florin, 2.02 miles.

As to all the freight available for transportation over the line of the complainant at any one of the points just mentioned a haul of at least the distance indicated is necessary in order to reach the nearest carrier other than complainant to which it might be delivered; and, of course, as to shippers who have freight originating at points in the direction from each of the stations away from the carriers, other than the complainant, there must be added to the distances set out herein the distance from the point in question to the station on the line of the complainant. When it is recalled that the entire section through which these three lines pass is fertile and much of it in a state of intense cultivation, it seems to me that we must conclude that it is a very great inconvenience to the shippers to be required to make this unnecessary haul in order to be accorded the lower rate, and particularly does it not come with good grace from the defendant to contest this relief when it will receive the freight, if it receives it at all, under just as advantageous conditions from the lines of the Central California Traction Company as from the lines of the Western Pacific. In other words, defendant is insisting that these farmers continue this unnecessary haul when by the continuation of this condition it will either not get the freight at all or if it gets it it will receive it under just as favorable conditions as exist with reference to the freight delivered to it under its joint arrangement with the Western Pacific. The net result to the defendant of the granting of the relief sought by complainant will be the furnishing to it of more freight than it now receives at rates which are not lower than it has voluntarily put in with reference to similar freight received by way of the Western Pacific. It is not surprising that Mr. Chambers in his letter to Mr. Mitchel said "such an arrangement in itself I am willing to admit would be of benefit to the Santa Fe lines." I believe that instead of being a disadvantage to the Santa Fe the establishment of the through route and joint rates as prayed for will be a distinct advantage, will add to its revenues, will give it a reasonable rate for the additional service which

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it is called upon to perform and will add to the convenience of many shippers along the line of the Central California Traction Company.

I, therefore, find as a fact from the evidence that public convenience and necessity will be served by the establishment of a through route and joint rates for freight and a through route and joint fares for passenger traffic between points on the Central California Traction Company north of Stockton to and including Sacramento, and points on the Atchison, Topeka and Santa Fe Railway to and from which point on the Atchison, Topeka and Santa Fe Railway joint freight and passenger rates are maintained and published in connection with the Western Pacific Railway from and to points on said Western Pacific Railway north of Stockton to and including Sacramento and appearing in Pacific Freight Tariff Bureau—joint freight tariff 34– C, C. R. C. 68, Atchison, Topeka and Santa Fe Railway Company—Coast Lines joint passenger tariff No. A–569, C. R. C. 516, and Western Pacific Railway Company joint passenger tariff No. 271, C. R. C. 225.

I therefore recommend the following order:

ORDER.

Central California Traction Company, a common carrier, hereinafter called complainant, operating a railroad of standard gauge between the cities of Stockton and Sacramento, having filed its complaint against the Atchison, Topeka and Santa Fe Railway Company, hereinafter called the defendant, a common carrier operating a line of railway of standard gauge within the State of California, passing through the city of Stockton and having track connections with the line of said Central California Traction Company at said city of Stockton, praying that a through route and joint fares for passenger traffic and a through route and joint rates for freight traffic be established between said Central California Traction Company and said Atchison, Topeka and Santa Fe Railway Company between all points on the said Central California Traction Company and certain specified points on the line of the Atchison, Topeka and Santa Fe Railway Company within the State of California.

And the said defendant having answered said complaint and a hearing having been duly and regularly had, and the Commission being fully advised in the premises, the Commission finds as a fact: That no satisfactory through route and joint fares for passenger traffic and no satisfactory through route and joint rates for freight traffic exist between any points on the line of complainant and any points on the line of defendant within the State of California.

And the Commission further finds as a fact that public convenience and necessity demand the establishment of a through route and joint fares for passenger traffic and a through route and joint rates for freight traffic between the following points within the State of Cali-

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fornia on the lines of the said complainant and the said defendant herein, to wit:

Between points on the Central California Traction Company north of Stockton to and including Sacramento, and all points on the Atchison, Topeka and Santa Fe Railway to and from which points on said Atchison, Topeka and Santa Fe Railway joint freight and passenger rates are maintained and published in connection with the Western Pacific Railway from and to points on said Western Pacific Railway north of Stockton to and including Sacramento; said joint rates between said defendant and said Western Pacific Railway appearing in Pacific Freight Tariff Bureau—Joint Freight Tariff 341–C, C. R. C. 68, Atchison, Topeka and Santa Fe Railway Company—Coast lines joint passenger tariff No. A–569, C. R. C. 516, and Western Pacific Railway Company joint passenger tariff No. 271, C. R. C. 225.

And the Commission further finds as a fact that the fares for passenger traffic and the rates for freight traffic set out in the said tariffs just mentioned are just and reasonable rates to be charged by the said complainant and the said defendant over the through routes for passenger and freight traffic herein set out, and hereinafter established; said fares and said rates to apply to and from stations on the line of complainant which correspond to opposite points on the line of the Western Pacific, *i. e.*, to and from opposite points, as that word is understood in railroad parlance, on the Western Pacific and the line of complainant, the rates shall be the same to and from the same point on the line of the defendant.

Basing its conclusions on the foregoing findings of fact and on the further statements and facts which occur in the opinion which precedes this order,

It is hereby ordered as follows:

1. A through route for passenger and freight traffic is hereby established between all points on the line of the Central California Traction Company north of Stockton, to and including Sacramento, and points on the Atchison, Topeka and Santa Fe Railway in the State of California, to and from which points on the said Atchison, Topeka and Santa Fe Railway joint freight and passenger rates are maintained and published in connection with the Western Pacific Railway Company, from and to points on said Western Pacific Railway Company north of Stockton to and including Sacramento, and appearing in Pacific Freight Tariff Bureau—joint freight tariff 34–C, C. R. C. 68, Atchison, Topeka and Santa Fe Railway Company—Coast Lines joint passenger tariff No. A–569, C. R. C. 516, and Western Pacific Railway Company joint passenger tariff No. 271, C. R. C. 225, to which tariffs reference is hereby made for particulars.

2. Joint fares for passenger traffic and joint rates for freight traffic

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are hereby established between the said points on the said through route hereinbefore established. Said fares for passenger traffic and said rates for freight traffic over said through route to be the same as are set out in the said tariffs hereinbefore referred to for joint fares and joint rates over the lines of the Western Pacific and the defendant herein, and the same joint fare and the same joint rate to apply between each several point on the line of the complainant and each several point on the line of the defendant as apply between each several corresponding opposite point on the line of the Western Pacific and the point on the line of the defendant in question.

3. Through checking of baggage over said through route for passenger traffic and through billing of freight over said through route for freight traffic shall be accorded to passengers and shippers.

4. As to points of transfer and conditions of transfer no order at this time is made, but if an agreement can not be satisfactorily reached between the complainant and defendant herein this Commission will hold a further hearing with reference to said matters and will make an order prescribing the conditions of interchange of passengers and freight required under this order.

5. This order to be effective on or before the twentieth day of October, 1912, and the parties to this proceeding will agree upon a proper division of the joint fares and joint rates herein established, but in the event such agreement can not be had satisfactory to each party hereto on or before the fifteenth day of October, 1912, this Commission will proceed to establish the division of said joint fares and joint rates as provided by law.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1912.

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DECISION NO. 245.

FRANK WILLIAMS AND JOHN W. HANNAY
vs.
LOS ANGELES & SAN DIEGO BEACH RAILWAY COMPANY.

Case No. 265.

Decided September 30, 1912.

Supplemental order respecting stoppage of trains and publication of passenger tariffs.

Frank Williams, for complainants.
Leovy & Leovy, for defendants.

REPORT OF THE COMMISSION (SUPPLEMENTAL OPINION).

THELEN, *Commissioner:*

In the above entitled matter the Commission made its order, dated August 23, 1912, readjusting passenger rates over defendant's line of railway between San Diego and La Jolla and points intermediate. Defendant was directed to file and publish the fares specified in the order, effective twenty days from the service of the order. On September 14, 1912, applicant, in order to hold the matter *in statu quo*, filed its application for a rehearing. In this application, applicant pointed out certain difficulties in applying a three cent rate as between different stations on the line and submitted a draft of local passenger tariff, worked out to the best of applicant's ability, in accordance with this Commission's order dated August 23, 1912. I recommend that this draft be approved, and that defendant be given ten days after service upon it of this order to file and publish the same.

In paragraph 3 of this Commission's said order, defendant was directed to stop at Seaside for passengers having tickets to that station and on flag, all its motor cars coming south and all its steam trains in either direction, except such trains going north as consist of more than three cars, and to print on all its time tables and tickets sold by agents or conductors, the names of all stations, including Seaside. Some confusion has arisen with reference to this portion of the order by reason of the fact that steam trains going north sometimes carry three cars and sometimes more than three. It appears that steam train No. 2, during a period of one month, has averaged five cars. Train No. 4, during the same period, has averaged four cars, but the average has been brought up by including the Sunday trains. On week days, train No. 4 generally carries less than four cars daily. Train No. 6 during a period of twenty-six days, has had twelve cars altogether over an average of three cars.

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Train No. 8, during the same period, has had an average of three and one thirtieth cars each trip. I recommend that this Commission's order in this respect be amended so as to provide specifically that applicant shall stop at Seaside going north, its steam trains Nos. 6, 8 and 4, except on Sunday. If difficulty arises from this solution of the problem, applicant may later apply by letter to the Commission for relief.

This disposes of the points raised in the application for a rehearing, and I recommend that the application be denied. I submit herewith the following form of order:

SUPPLEMENTAL ORDER.

Defendant in the action entitled as above having filed with this Commission its petition for a rehearing in the proceeding entitled as above, and due consideration having been given to the same,

It is hereby ordered, as follows:

1. In lieu of the single and round trip rates specified in section 1 of this Commission's order dated August 23, 1912, and of the one-way passenger fares therein prescribed, defendant is hereby directed to file and publish within ten days from the service on it of this order, the following local passenger tariff:

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Miles from S. D.	Stations.	4th & C sts.	Foot C street	Old Town	Hardy	Morena	Mission Bay	Lamont street	Haines street	Pacific Beach	Seaside	Glendol	Bird Rock	La Jolla Strand	S. La Jolla	La Jolla
0.0	4th & C sts.															
0.5	Foot C street	5 10														
3.7	Old Town	10 20	10 20													
4.8	Hardy	10 20	10 20	5 10												
6.2	Morena	15 25	15 25	10 20	5 10											
7.4	Mission Bay	20 30	20 30	10 20	10 20	5 10										
8.6	Lamont street	20 30	20 30	15 25	10 20	5 10	5 10									
9.0	Haines street	20 30	20 30	15 25	15 25	10 20	5 10	5 10								
9.6	Pacific Beach	25 35	25 35	20 30	15 25	10 20	5 10	5 10	5 10							
10.1	Seaside	25 35	25 35	20 30	15 25	10 20	10 20	5 10	5 10	5 10						
10.8	Glendol	30 40	30 40	20 30	20 30	15 25	10 20	10 15	10 15	5 10	5 10					
11.2	Bird Rock	35 45	35 45	25 35	25 35	20 30	15 25	15 20	15 20	10 20	10 20	5 10				
12.5	La Jolla Strand	40 50	40 50	30 40	30 40	25 35	20 30	20 30	20 30	15 25	15 25	10 20	5 10			
12.8	South La Jolla	40 50	40 50	30 40	30 40	25 35	20 30	20 30	20 30	15 25	15 25	10 20	5 10	5 10		
14.1	La Jolla	40 50	40 50	30 40	30 40	25 35	20 30	20 30	20 30	15 25	15 25	10 20	10 20	5 10	5 10	

First column of figures indicates single trip fares.
Second column indicates round trip fares.

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In other respects, said Section 1 of said order shall remain in full force and effect.

2. Section 3 of this Commission's said order, dated August 23, 1912, is hereby amended so as to read as follows: "3. Defendant is directed to stop at Seaside for passengers buying tickets to that station and on flag, all its motor cars coming south, all its steam trains coming south, and also its steam trains Nos. 6, 8, and No. 4 except on Sunday, going north, and to print on all its time tables and tickets sold by agents or conductors the names of all stations, including Seaside."

3. This order shall become effective ten days after service upon defendant.

4. In all respects except as herein modified, this Commission's order dated August 23, 1912, shall remain in full force and effect.

5. Applicant's petition for a rehearing is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1912.

DECISION NO. 246.

IN THE MATTER OF THE RATES AND SERVICE OF THE SAN GORGONIO WATER COMPANY AND THE BEAUMONT LAND AND WATER COMPANY.

Case No. 308.

Decided September 30, 1912.

Ordering, upon consumers' complaints against water rates and service, that the Commission investigate the matter on its own initiative, and that the matter be consolidated with certain other proceedings.

REPORT OF THE COMMISSION.

ORDER.

Whereas a number of the residents of Beaumont, California, have made complaint to this Commission with reference to the rates and service of the San Gorgonio Water Company and the Beaumont Land and Water Company; and

Whereas this Commission finds that public necessity requires that it make an investigation into the rates and service of said companies; now, therefore,

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It is ordered that this Commission institute, on its own initiative, under the provisions of section 60 of the Public Utilities Act, an inquiry into the matter entitled as above, and that the secretary of this Commission be and he is hereby instructed to notify said San Gorgonio Water Company and said Beaumont Land and Water Company to appear before this Commission on Friday, November 1, 1912, at 2 p. m., at Beaumont, California, at which time and place said San Gorgonio Water Company and said Beaumont Land and Water Company may appear and be heard in said matter; and

Be it further ordered that if either the San Gorgonio Water Company or the Beaumont Land and Water Company do not appear at said time and place, such company shall be guilty of contempt of this Commission, and subject to the penalties prescribed by said Public Utilities Act; and

Be it further ordered that Case No. 275, entitled *John Johnson* vs. *San Gorgonio Water Company and Beaumont Land and Water Company,* and Case No. 280, entitled *May M. Gray* vs. *San Gorgonio Water Company and Beaumont Land and Water Company,* which cases have heretofore been filed with this Commission, be and the same are hereby merged into this investigation herein ordered by the Commission upon its own initiative, and the secretary of this Commission is hereby instructed to notify the said John Johnson and the said May M. Gray that each of them may appear at the time and place hereinbefore specified and be heard upon the matters set forth in the complaints filed in said cases Nos. 275 and 280.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1912.

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DECISION NO. 247.

IN THE MATTER OF THE APPLICATION OF MOUNT WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING AN ADDITIONAL FORM OF METER CONTRACT.

Application No. 209.

Decided October 1, 1912.

REPORT OF THE COMMISSION.

Mount Whitney Power and Electric Company having applied to this Commission for an order authorizing said company to put into effect a new form of meter contract for the service of power to its consumers, which contract provides for a minimum rate of twenty-four ($24.00) dollars per year, a copy of which proposed form of contract is attached to the application in this proceeding and marked "Exhibit A"; and the Commission being of the opinion that under the conditions imposed herein a formal hearing will not be necessary on this application,

It is hereby ordered that the Mount Whitney Power and Electric Company be, and the same is hereby authorized to put into effect, until the further order of this Commission, a new form of meter contract or regulation providing for a minimum charge of twenty-four ($24.00) dollars a year, in accordance with the form and terms of the contract attached to the application in this proceeding, marked "Exhibit A," with the following modification of such form to be included therein:

> "It is understood by and between the parties hereto that this agreement is merely in the nature of a regulation and subject at all times, after proceedings duly had, to change or abolition by the Railroad Commission of the State of California."

This permission and approval of this regulation is subject to the condition precedent that the present form of contract be available to such consumers at their option, and that all contracts hereafter made by said Mount Whitney Power and Electric Company with its customers have included therein the language heretofore prescribed to be included in this form of contract, or language of similar import satisfactory to this Commission.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of October, 1912.

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DECISION No. 248.

IN THE MATTER OF THE PETITION OF THE METROPOLITAN WAREHOUSE COMPANY AND VARIOUS OTHER WAREHOUSES TO INCREASE THEIR RATES FOR STORING AND HANDLING COMMODITIES.

Applications Nos. 16 to 25, inclusive, No. 28 and No. 121.

IN THE MATTER OF STORAGE AND HANDLING RATES ON COFFEE.

Application No. 125.

Decided October 3, 1912.

Modification of the original order herein held necessary upon introduction of evidence by various patrons of applicants on motion for rehearing. It is in evidence that warehouse rates in San Francisco have been made under a competitive system wherein there has been no consistency either in the basis for making the rate or its amount.

Held, That the tariff should be revised, not necessarily as to the amount of the rates in every instance, but to bring about consistency; but under the conditions of the case as it now stands, this cannot be done at present unless the modification asked for be denied and the entire tariff called into question by the Commission, by reason of the fact that the protest only goes to certain specified commodities and as to the other commodities the rates are now in effect.

Held, That it is not proper to require the protestants to pay the higher rates set out in the tariff and, therefore, either the modification must be allowed, in which case certain inconsistencies in the tariff will result, or the modification denied with resultant injustice to the consumers.

Held, That the modification be allowed and that the correction of inconsistencies be left to a future proceeding.

Donald Y. Campbell, for intervenors Atkins & Kroll.
C. W. Durbrow, for applicants.
Seth Mann, for protestants.

REPORT OF THE COMMISSION (SUPPLEMENTAL OPINION).

ESHLEMAN, *Commissioner*.

On the 6th day of June, 1912, this Commission entered its order approving Warehouse Tariff C. R. C. No. 1, but thereafter on the application of patrons of these warehouses several extensions of the effective date of this order were made, and on July 5, 1912, A. S. Ferguson and others filed an application for rehearing, which was heard on the 11th day of September, 1912.

In the hearing of the original application no evidence was introduced in opposition to the application and only one protest entered, and the decision was rendered solely from the evidence presented by the appli-

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cants. On the motion for rehearing evidence was introduced by various patrons of these warehouses, which in my opinion renders a modification of the original order necessary.

On June 25, 1912, the Hutton Warehouse made application for permission to increase its rates for storing and handling commodities so as to bring its entire schedule of rates up to the rates as shown in Warehouse Tariff C. R. C. No. 1 of the Metropolitan Warehouse Company and other San Francisco warehouses.

For the purpose of hearing this application was joined with application of the warehousemen involved in this general matter and finally set down for hearing on September 11, 1912. No evidence was introduced at this hearing to justify the increase in rates proposed by the Hutton Warehouse, nor was testimony taken in regard to this application. Therefore, I recommend that the application of the Hutton Warehouse to increase rates for storing and handling commodities be denied without prejudice.

For the purpose of hearing the Commission joined to the general matter of warehouse rates herein involved the matter of the application of Schwartz Bros. and W. R. Grace & Co., and various other coffee importers and brokers, for the rehearing of informal order of the Commission establishing certain rates for storage of coffee as of March 23, 1912.

The evidence presented and testimony taken at the original hearing as to why the informal order of the Commission fixing March 23, 1912, as the date on which said coffee rates became effective was insufficient on which to base a decision. Further evidence was not presented nor additional testimony taken in this regard at the hearing on September 11th, and I therefore recommend that application No. 125 of Schwartz Bros. and W. R. Grace & Co. *et al.* for an order modifying the provisions of an informal order setting March 23, 1912, as the date on which certain coffee rates become effective, be hereby denied without prejudice.

It is apparent that a modification along the lines asked for by those applying for a rehearing will bring about certain inconsistencies in the tariff inasmuch as about two thirds of the items are not questioned, and as to them one system of rates will prevail, and as to the items questioned, if relief is granted, under the evidence it will have to be granted under a system of rates different from the one appearing in Warehouse Tariff No. 1.

The protestants have proceeded upon an entirely different theory of making rates than that which has been followed in the tariff in question, but they have presented evidence sufficient to justify a modification of the order in certain particulars. It is in evidence that warehouse rates in San Francisco have been made under a competitive system

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wherein there has been no consistency either in the basis for making the rate or its amount. It was made evident in the hearing on the original application and the evidence introduced on application for rehearing has not refuted it, that the warehouses have been doing business at a loss. Warehouse Tariff No. 1 contains large increases in most of the important commodities, and the proposed modification of this tariff by the patrons herein still allows substantial increases over the old rates, but increases that do not bring the rates up to the level provided in Warehouse Tariff No. 1.

I am of the opinion that the entire tariff should probably be revised, not necessarily as to the amount of the rates in every instance, but to bring about consistency; but under the conditions of the case as it now stands this can not be done at present unless the modification asked for be denied and the entire tariff called into question by this Commission. This is brought about by the fact that the protest only goes to certain specified commodities, and as to the other commodities the rates are now in effect. As I have already said, I believe the modification should be made, and that it is not proper to require the protestants to pay the higher rates set out in the tariff. Therefore, we must either allow the modification and bring about certain inconsistencies in the tariff, or refuse to allow any change and do an injustice to these consumers. I consider of the two evils the latter is the greater, and that we should allow the modification and leave the inconsistencies to a future proceeding.

The rates on something like one third of the commodities and all the rules are questioned in the application for rehearing.

At the time of the termination of the hearing the attorney for the protestants was given an opportunity within a certain specified time to present protests against other commodities which were not covered in his original protest. It was never intended nor expected that under this permission the protestants would do more than call into question other commodities that had been inadvertently overlooked of the same general character as those questioned in the original protest. This permission, however, has been used to question almost all the commodities in Warehouse Tariff No. 1, concerning a great number of which no evidence was introduced, and which in the main are so dissimilar to those concerning which evidence was introduced as to make such evidence ordinarily inapplicable. Therefore, I have found it necessary to eliminate from the protest a great number of these commodities concerning which no evidence was introduced.

I am aware that these tariffs, both that presented by the warehousemen and the one presented by the protestants, are somewhat experimental in their nature, but the whole condition of the warehouses will be so much better than heretofore by the new system of rates which

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will be the result of this supplemental order and the original order in this case that even should they not be convinced of the reasonableness of some of the rates, they should give the new scheme a careful trial, and the Commission will of course accord to them every opportunity in the future of showing from the actual operation of this tariff what its result is. It is my opinion that the rates in this tariff which will result from the original order and the supplemental order are just and reasonable, but I am basing this conclusion upon evidence which from both sides is admittedly the result partly of theory and partly of practice; and if in practice it does not work out as the evidence in this case leads us to conclude, it will then be the right of the warehousemen to present that fact to the Commission, and the Commission will give consideration thereto.

The difference of opinion concerning the general rules is inconsiderable in the main, and I have found it very easy to reach a determination as to what the rules should be from the evidence in the case, and the rules which should apply to all the business of these warehousemen will be set out in full in the order, as well as the commodities and rates which will be changed as the result of this supplemental proceeding.

Atkins & Kroll, holding a contract with the Vallejo Street Free Warehouse, one of the applicants herein, asked and were granted leave to intervene. It is urged by intervenors that their contract protects them from any rates which may be made by this Commission in this proceeding. This is purely a question of law. If the contract of Atkins & Kroll protects them from the imposition of rates fixed by this Commission, that fact does not at all affect the power of this Commission to make this order, but merely would go to the applicability of the order to commodities stored under contract. Inasmuch as the warehousemen have evinced a willingness voluntarily to observe contracts heretofore made, and this whole question of contracts is a matter now being considered by this Commission in certain water cases wherein practically the entire supply is the subject of contract, and in which cases it will be absolutely essential for the Commission to define its position with reference to such contracts, I recommend that in the present case the warehousemen be permitted to continue the contracts which have heretofore been entered into by them, until the further order of this Commission; it being understood, however, that this Commission does not commit itself either to approve or disapprove such contracts when the matters shall finally be determined.

I therefore recommend the following form of supplemental order:

SUPPLEMENTAL ORDER.

The Metropolitan Warehouse Company and various other warehouses having heretofore applied to this Commission for the establishment of

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rates applicable to such warehouses within the city and county of San Francisco, and a hearing having been held, and the Commission having heretofore entered its order establishing C. R. C. Warehouse Tariff No. 1, and thereafter, before the effective date of said order, A. S. Ferguson and others having applied for a rehearing, and a hearing having been regularly held on said application, and evidence having been introduced, the Commission finds as a fact that the following general rules are reasonable to apply to the business of said warehouses:

1. Storage charges shall begin on the date of the receipt of the first package of any lot in the warehouse; for the purpose of computing storage, any lot shall be deemed completed when warehouse receipt is issued therefor.

2. The first term rates as listed cover one month's storage and all handling incident thereto for one calendar month; *e. g.*, storage on goods received on the tenth of the month expires on the ninth of the following month; provided, that should storer elect to have charges assessed on the first-of-the-month balance basis, the first term shall expire on the last day of the month in which the lot is received, in which case full first term rates shall apply upon goods received in warehouse up to and including the fifteenth of the month, and second term rates shall apply upon goods received in warehouse after the fifteenth of the month. Second term rates shall apply upon balances remaining in warehouse at the expiration of the next preceding term.

3. Storage on all commodities not specifically rated in free warehouses will be 24 cents per ton; in bonded warehouses 30 cents per ton. Storage on goods stored in free warehouse yards or sheds, not specifically rated, will be 25 cents per ton; in bonded warehouse yards or sheds, 37½ cents per ton.

4. Minimum storage charge on each item of any account shall be 25 cents per month, and the minimum storage charge on any account shall be 50 cents per month.

5. Labor charge covers handling of goods from warehouse door or warehouse platform into the warehouse and delivery from warehouse to warehouse door or warehouse platform. It does not cover unloading from or loading into cars.

6. Labor of handling commodities not specially rated will be 25 cents per ton of 40 cubic feet or 2,000 pounds.

7. Labor furnished for special services of any description, not otherwise provided for, will be charged for at the rate of 50 cents per hour.

8. Charge for unloading cars will be 20 cents per ton of 2,000 pounds, excepting where special rates are given on page 14.

9. Where goods are delivered direct from car to team special unloading charge of 20 cents per ton of 2,000 pounds will apply.

10. Charge for loading cars will be 20 cents per ton of 2,000 pounds.

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11. Charge for weighing either into or out of the warehouse will be 15 cents per ton of 2,000 pounds for each weighing. Minimum weighing charge on any lot or delivery, 10 cents.

12. Space for repacking, coopering, overhauling or strapping goods in warehouse, when required by the storer, may be charged for when occupied to the exclusion of other goods. In no case, however, shall such cost exceed 4 cents per square foot per month for space used, and no charge shall be assessed except by prearrangement with storer.

13. Stenciling will be charged at the rate of ¼ cent per package. Minimum charge for stenciling any one lot, 10 cents. No charge to be made for ordinary machine cut, paper board stencils furnished. Special stencils, hand cut, furnished at cost, provided that no charge for the marking of goods with lot number on each package, as a means of identification, shall be made.

14. Storage rates named herein do not include fire insurance.

15. All charges for storage, etc., are due and payable when same accrue. Bills will be rendered and collected monthly.

16. Rates for rental of space on ground or first floor in free warehouses, without labor or other services, will be as follows:

	Minimum, per month.
Up to 250 square feet, 6 cents per square foot per month	$3 00
Up to 500 square feet, 5 cents per square foot per month	15 00
Up to 1,000 square feet, 4 cents per square foot per month	30 00
Up to 2,000 square feet, 3½ cents per square foot per month	50 00
Up to 3,000 square feet, 3 cents per square foot per month	75 00
Over 3,000 square feet, 2½ cents per square foot per month	100 00

Rates for space in upper floors or galleries will be 15 per cent less than above rates, with corresponding reduction in the minimum monthly charge, but no rate to be less than 2½ cents per square foot per month.

These rates include use of spur tracks, elevator service, light and water, warehouse trucks, tools, etc.

17. The warehouseman reserves the right to require the removal of all goods stored by the month on thirty days' notice; that is to say, all goods stored under ordinary terms from month to month shall be construed as stored under month-to-month contract, terminable by either party upon giving thirty days' notice.

18. Rates of insurance may be equalized at warehouseman's option.

19. The term ton herein contained means 40 cubic feet or 2,000 pounds, warehouseman's option.

And the Commission further finds as a fact that the rates established in said Warehouse Tariff C. R. C. No. 1 on the following commodities are unjust and unreasonable:

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Ale, Beer and Porter.
Almonds, see Nuts.
Batts, see Dry Goods.
Baking Powder.
Baking Powder, case 6–8–12 oz. and 1 lb.
Baking Powder, case 2½–3 lb.
Baking Powder, case 5 lb.
Baking Powder, case 15–50 oz.
Baking Powder, bbl. 220 lb.
Baking Powder, bbl. 420 lb.
Barley, Pearl, etc.
Beans, see Grain.
Beer Kegs, empty, storage, handling and loading cars, 4 cents each.
Beer, see Ale and Porter.
Bi-Carb. Soda, cask.
Bi-Carb. Soda, keg.
Biscuits.
Bitters, see Liquors.
Blankets, see Dry Goods.
Bon Ami.
Bottles, case up to 3′.
Bottles, case over 3′.
Bottles, crate or bale.
Brandy, see Liquors.
Breakfast Foods, see Cereals.
Canned Goods, case 2 lb.
Canned Goods, case 2½ and 3 lb.
Canned Goods, 4 doz. ½s.
Canned Goods, 4 doz. 1s.
Canned Goods, case, gallons.
Canned Goods:
  Crab.
  Deviled Ham.
  Meat.
  Oysters.
  Strapping, labor and material.
Catsup.
Cerealline.
Cereals:
  Corn Flakes.
  Corn Meal.
  Cracked Wheat.
  Egg–O–See.
  Malta Vita.
  Meal, bbls.
  Meal, 50 lb. sack.
  Meal, 90/100 lb. sack.
  Meal, bale.
  Oat Meal, 36s case.
  Oat Meal, bbl.
  Puffed Rice, 36s case.
  Quaker Oats, 18s case.
  Quaker Oats, cartons.
  Quaker Oats, tins.
  Quaker Oats, 20/5s case.
  Rusks, 7′ case.

Cereals—*Continued.*
  Rusks, 4′ 6″ case.
  Shredded Wheat.
  Triscuit.
  Vitos.
  Zest.
  All others.
Champagne, see Liquors.
Chocolate.
Clothing, see Dry Goods.
Cocoa, case.
Cocoa, bbls.
Comforters, see Dry Goods.
Condensed Milk, see Milk.
Corn Meal, see Cereals.
Cracked Wheat, see Cereals.
Cream, see Milk Condensed.
Cream Tartar.
Dried Fruit, see Fruit.
Drugs, N. O. S., cases not over 30 lb.
Drugs, N. O. S., cases not over 50 lb.
Drugs, N. O. S., cases not over 100 lb.
Drugs, N. O. S., cases over 100 lb., per 100 lb.
Dry Goods, case not over 30′.
Dry Goods, case over 30′.
Dry Goods, bale.
Dry Goods, batts.
Dry Goods, Comforter.
All Dry Goods, first of month balance.
Egg–O–See, see Cereals.
Enameline.
Flour, ⅛ sack.
Flour, ¼ sack.
Flour, ½ sack.
Flour, bales.
Fly Paper.
Fruit, Dried, 25 lb. box.
Fruit, Dried, 50 lb. box.
Fruit, Dried, sack.
Gin, see Liquors.
Ginger Ale, bbl.
Ginger Ale, case.
Glue.
Grain:
  Barley.
  Beans, ordinary sacks.
  Beans, large sacks.
  Beans, gunnies.
  Beans.
  Corn.
  Lentils.
  Oats.
  Peas.
Grape Juice.
Japanese Goods:
  Canned Crab.

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Liquors:
- Alcohol, Spirits, Wine and Whiskey, bbl.
- Alcohol, Spirits, Wine and Whiskey, ½ bbl.
- Alcohol, Spirits, Wine and Whiskey, keg.
- Alcohol, Spirits, Wine and Whiskey, oct.
- Alcohol, Spirits, Wine and Whiskey, puncheons or casks.
- Alcohol, Spirits, Wine and Whiskey, case, bottles.
- Alcohol, Spirits, Wine and Whiskey, case 10 gal.
- Bitters, small.
- Bitters, large.
- Brandy.
- Cordials.
- Champagne.
- Gin, small.
- Gin, large.
- Vermouth.

Lye, 27 lb. cases.
Lye, 54 lb. cases.
Lye, 110 lb. case.
Matting.
Milk, Condensed, cases not over 30 lb.
Milk, Condensed, cases over 30 lb.
Milk, Malted, cases not over 30 lb.
Milk, Malted, cases not over 50 lb.
Milk, Malted, barrels.
Mineral Water, case, 25 pts. 50 splits.
Mineral Water, case 25 qts. 50 pts.
Mineral Water, case 100 splits.
Mineral Water, case 50 qts. 100 pts.
Nails, kegs.
Nails, 25 lb. box.
Nails, 50 lb. box.
Nuts:
- Almonds.
- Almonds, shelled.
- Almonds, cartons 60 lb.
- Walnuts.

Nuts, N. O. S.
Oats, see Grain.
Oat Meal, see Cereals.
Oil Cloth, see Linoleum.
Oysters.
Paper (Toilet), cases not over 3′ 6″.
Paper (Toilet), cases over 3′ 6″.
Paper Towels.
Peanuts, see Nuts.
Raisins, box 5 and 10 lb.
Raisins, box 20 lb.
Raisins, box 50 lb.
Rice, sack 100 lb.
Rice, mat, 50 lb.
Rice:
- Mixing.
- Resacking.
- Inserting double bag.
- Mixing and resacking into mats, including stenciling.

Root Beer.
Salmon.
Salt, bbl.
Salt, cases not over 25 lb.
Salt, case 50 lb.
Salt, case 100 lb.
Sardines, domestic.
Sardines, imported.
Sauce, ½ pts. and pts.
Sauce, qts.
Soap, bbls.
Soap, cases not over 30 lb.
Soap, case to 50 lb.
Soap, case to 80 lb.
Soap, case over 80 lb.
Soups, see Canned Goods.
Starch, bbl.
Starch, crate.
Starch, box, 12 lb. to 20 lb.
Starch, box, 36 lb. to 50 lb.
Stove Polish.
Sugar, ½ bbl.
Sugar, bbl.
Sugar, case.
Sugar, sack.
Tapioca Flour.
Tea:
- Gunpowder.
- Ceylons, half chests (not over 60 lb.)
- Ceylons, chests.
- China Blacks.
- Japans.
- Repiling.
- Weighing, in bulk.
- Weighing, singly and marking.
- Sampling, 10 cents per pkg.
- Taring.

Tiles, bbl.
Tiles, case.
Tinplate, strips.
- Canner's Waste.

Triscuit, see Cereals.
Walnuts, see Nuts.
Washing Powder, case 2′.
Washing Powder, case 3′.
Whiskey, see Liquors.

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And the Commission further finds as a fact that the following rates for the following specified commodities are just and reasonable rates to be charged by said warehousemen, parties to this proceeding, and the said rates on the said commodities are hereby established as just and reasonable rates:

Tea, in chests or boxes; matting, in rolls; sugar, in bags; bottles, empty, in crates; beer kegs, empty; rice, in sacks; beans, split peas, lentils, tapioca or flour in packages; tile, in boxes, barrels or kegs; nails, in kegs; tin strips, in cases; dried fruits, in boxes or sacks; raisins in boxes or sacks; nuts, in bags; toilet paper and paper towels, in cases. Also

Canned Goods and Case Goods, viz.: Canned fruit, vegetables, meat, fish, fowl, pork and beans, crab, clam juice, clam chowder, soup and oysters.

Baking powder, barley, ground or prepared cocoanut, chocolate, cocoa, condensed milk, cereals and cereal breakfast food, fly paper, flour or meal in packages or tins, grape juice, glue, mucilage, photo paste, malted milk, lye, potash, soap, soap powder, starch, soda bicarbonate, stove polish, salt, shredded wheat biscuit, triscuit, tapioca, wines, liquors, ale, beer, porter, mineral water, drugs, medicines and extracts in cases, fiber or veneer containers or crates measuring—

	First term.	Second term.
Up to and including ½ cubic foot per package	3/10	2/10
Up to and including 1 cubic foot per package	6/10	4/10
Up to and including 1½ cubic feet per package	9/10	6/10
Up to and including 2 cubic feet per package	1 2/10	8/10
Up to and including 2½ cubic feet per package	1 5/10	1
Up to and including 3 cubic feet per package	1 8/10	1 2/10
Up to and including 3½ cubic feet per package	2 1/10	1 4/10
Up to and including 4 cubic feet per package	2 4/10	1 6/10

Rates on larger cases will be respectively 3/10 cent and 2/10 cent for first and second terms per each ½ cubic foot or fraction thereof on each package.

Dry Goods.—Including batts, comforters, quilts, blankets, burlap, bleached and brown cotton, muslin, sheeting, sheets, pillow cases, ticking, khaki, flannels, flannelettes, denims, oilcloth, prints, ginghams, cheviots, selicias, linings, mosquito bar, hosiery, underwear, yarn and other dry goods and dry goods notions not herein specified in cases or bales—

	First term.	Second term.
Up to and including 5 cubic feet each	3	2
Up to and including 10 cubic feet each	6	4
Up to and including 15 cubic feet each	9	6
Up to and including 20 cubic feet each	12	8
Up to and including 25 cubic feet each	15	10
Up to and including 30 cubic feet each	18	12
Up to and including 35 cubic feet each	21	14

Rates on larger packages will be respectively for first and second terms, 3 cents and 2 cents for each 5 cubic feet or fraction thereof on each package.

As to rates on all other commodities not found herein to be unreasonable the rates shown in Warehouse Tariff C. R. C. No. 1 on file with this Commission will after the effective date of this order apply.

And it is ordered that tariff containing the rates, rules and regulations found herein to be reasonable shall be filed with this Commission to become effective twenty (20) days from the date of this order.

And it is further ordered that the application of the Hutton Warehouse Company for permission to increase rates for storing and handling commodities be and it is hereby denied without prejudice.

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And it is further ordered that the application of Schwartz Bros. and W. R. Grace & Co. *et al.* for an order modifying the Commission's informal order fixing March 23, 1912, as the date on which certain rates filed with the Commission on April 20, 1912, were effective, be and it is hereby denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

DECISION NO. 249.

IN THE MATTER OF THE APPLICATION OF WESTERN UNION TELEGRAPH COMPANY TO FILE A CHANGE OF RATES IN THE PLACE AND STEAD OF ITEM NO. 8 OF SCHEDULE OF RATES FILED WITH SAID COMMISSION BY WESTERN UNION TELEGRAPH COMPANY ON APRIL 18, 1912.

Application No. 137.

Decided October 3, 1912.

REPORT OF THE COMMISSION. SUPPLEMENTAL ORDER.

Whereas this Commission has heretofore made its order dated August 24, 1912, in the application entitled as above; and,

Whereas Western Union Telegraph Company has now filed with this Commission its supplemental application, filed September 6, 1912, alleging that through inadvertence, the original application was so worded as to convey the idea that said applicant desired to cancel all of its rates for regularly incorporated press associations, as shown in Item No. 8 of its schedule of rates, whereas applicant desired to cancel only the third class or circuit rates, as set forth in said Item No. 8, and to substitute therefor the rates for press association combination reports, as set forth in "Exhibit A," attached to the original application, and did not desire to make any change in its first, second and fourth class rates, as listed in said Item No. 8; and,

Whereas it appears from an investigation that a reduction in rates will follow from the proposed change affecting third class rates, and that ambiguities will be removed and a more simple method of accounting provided, and that no injustice will be done by granting the prayer of said supplemental application, and by restoring to full force and

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effect said Item No. 8 in so far as affects first, second, and fourth class matter,

It is hereby ordered that this Commission's opinion and order dated August 24, 1912, is hereby amended in the following respects:

1. In the second line of the opinion insert the word "association" after the word "press," so that the sentence will read "This application involves a proposed schedule of rates for the transmission of press association messages," etc.

2. On page 2, line 8, of the opinion, after the words "in lieu," insert the words "of the third paragraph entitled Third Class (circuit rates)" so that the sentence will read "The applicant proposes in lieu of the third paragraph entitled Third Class (circuit rates) of the above item, to publish the following," etc.

3. On page 3, line 2, of the order, after the word "cancel," insert the words "the third paragraph entitled Third Class (circuit rates) of," so that the sentence will read "Application No. 137 of Western Union Telegraph Company requests permission to cancel the third paragraph, entitled Third Class (circuit rates) of Item No. 8 of schedule of rates filed with the Commission," etc.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

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DECISION NO. 250.

IN THE MATTER OF THE APPLICATION OF THE HALF MOON BAY LIGHT AND POWER COMPANY FOR PERMISSION TO INCREASE CAPITALIZATION.

Application No. 166.

Decided October 3, 1912.

Ordered, That applicant be permitted to increase its capital stock from $25,000 to $100,000, and to use the proceeds realized from the sale of the increased amount for the discharge of indebtedness and for improvements and betterments.

John O. McElroy and *J. J. Gomes*, for applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner:*

Applicant is a corporation organized and operating under the laws of California, for the purpose of furnishing electric energy for heat, light and power purposes to residents of the town of San Mateo, California. Its present capital is twenty-five thousand ($25,000) dollars, divided into 250 shares of the par value of one hundred ($100) dollars each. Of the 250 shares 166 shares, or sixteen thousand six hundred ($16,600) dollars' worth of stock, have been sold for cash to J. J. Gomes and members of his family, and 50 shares, or five thousand ($5,000) dollars' worth of stock, have been given to J. J. Gomes as compensation for promotion expenses. This leaves three thousand four hundred ($3,400) dollars of the present capitalization unissued.

In addition to the sixteen thousand six hundred ($16,600) dollars paid for stock, applicant has expended fourteen thousand and seventy-four ($14,074) dollars in the construction of its main line and extensions, statement of which indebtedness is attached herewith.

Applicant now asks to increase its capital stock to one hundred thousand ($100,000) dollars, to be divided into 4,000 shares, at twenty-five ($25) dollars each, and requests permission to distribute to the holders of stock under the present capitalization new stock at twenty ($20) dollars per share, or 80 per cent of par to the value of their holdings under the present capitalization; and to be authorized to issue 100 shares to John O. McElroy, in payment of his fee as attorney for the company, and to sell the remainder of the stock at twenty ($20) dollars per share, or 80 per cent of par.

There will, therefore, be left to be sold at twenty ($20) dollars per share 2,820 shares, upon the sale of which will be realized fifty-six

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thousand four hundred ($56,400) dollars. From this amount will be paid the indebtedness of the company, amounting to fourteen thousand and seventy-four ($14,074) dollars, leaving forty-two thousand three hundred and twenty-six ($42,326) dollars to be devoted to the purpose of further construction and equipment.

A statement of the extensions and an estimate of the cost thereof, number of consumers that will be served, amount of current used and income therefrom is submitted and filed with the papers in the case. It will be noticed that in estimating the number of consumers, no estimate is given of the motor power consumption, and applicant states as a reason for this that it contemplates asking this Commission to approve of a bond issue to properly develop the motor power and consumption.

I recommend that the application be granted and that the following order be issued:

ORDER.

Application having been made to the Railroad Commission of the State of California by the Half Moon Bay Light and Power Company, a corporation organized for the purpose of selling electric energy to the residents and users of such energy in San Mateo County, California, to increase its capitalization from twenty-five thousand ($25,000) dollars, consisting of 250 shares at one hundred dollars ($100) dollars each, to one hundred thousand ($100,000) dollars, consisting of 4,000 shares at twenty-five ($25) dollars each, the holders of stock under the present capitalization to exchange their stock for stock under the new capitalization at twenty ($20) dollars per share on a par value of twenty-five ($25) dollars, or 80 per cent of par, and the remainder of the new issue to be sold at not less than 80 per cent of par; and a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said stock is necessary and reasonably required by said company for the discharge of its obligations and for needed extensions, and that the purposes for which the proceeds of the sale of said stock are to be used are not in whole or in part reasonably chargeable to operating expenses or income.

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize said applicant, the Half Moon Bay Light and Power Company, to increase its capital stock from twenty-five thousand ($25,000) dollars to one hundred thousand ($100,000) dollars, said one hundred thousand ($100,000) dollars, capital stock to be divided into 4,000 shares of twenty-five ($25) dollars each.

Holders of stock under the present capitalization are to receive stock under the new capitalization in exchange for their present holdings at twenty ($20) dollars per share on a par value of twenty-five ($25) dollars, or 80 per cent of par, and the remainder of the stock is to be sold

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at not less than 80 per cent of par, the proceeds from such sale to be devoted to the following purposes:

1. Payment and discharge of obligations of the company incurred by the construction and equipment as per the following statement, aggregating fourteen thousand and seventy-four ($14,074) dollars:

Cunningham, Curtiss & Welch (stationery)	$8 00
Thos. Day Company (fixtures)	54 40
General Electric Company	5,816 30
Halfmoon Garage	101 50
K. & Pohl (switches)	151 50
Mechanical Installation Company (motor)	105 00
Meese Gottfried Company (pulleys)	22 09
A. Kincaid (legal services)	155 00
North American Mercantile Company	222 05
Pacific Electric Manufacturing Company	141 91
Pacific Pipe Company	5 30
Pacific States Electric Company	4,888 21
Pierce Roeding Company (insulators)	329 29
Price Pump and Electric Company	168 35
Perry Bros. (livery hire) (Halfmoon Bay)	12 50
M. & K. Company (electric supply)	1 25
A. Ritz (merchandise)	1 25
J. A. Roebling (wire)	205 13
Levy	3 15
J. Rice (blacksmith)	3 50
Standard Underground Cable Company	516 52
R. B. Swayne (wholesale lumber)	580 30
Union Oil Company of California	18 50
C. Y. Vilasco (blacksmithing)	77 30
Wagner Electric Manufacturing Company	51 16
F. Bernardo (drayage)	22 75
C. W. Bordeu (lumber)	87 84
C. Debenedetti	4 10
Hicks, Judd Company (stationery)	63 50
Bancroft, Whitney Company	6 50
Great Western Power Company	244 00
Francis Bros. (tools) (Halfmoon Bay)	2 35
J. D. Neuman (surveyor)	3 50
Total	$14,074 00

2. The remainder of the sum realized from the sale of stock to be used for further construction and equipment of applicant's line.

Applicant shall keep separate, true and accurate accounts, showing the receipts and application in detail of the proceeds of the sale of said stock hereby authorized to be issued under this new and increased capitalization, and on or before the twenty-fifth day of each month shall make a verified report to this Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such stock during the preceding month, the terms and conditions of such sale or other disposition, the money realized therefrom and the use to which such money has been put.

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The authority hereby given to issue such stock under such increased capitalization shall apply only to stock issued by said company on or before the thirty-first day of August, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

DECISION NO. 251.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF BONDS AND PREFERRED STOCK IN CONNECTION WITH GAS HOLDER AT PORTERVILLE TO LINDSAY AND FROM LINDSAY TO EXETER AND DISTRIBUTING SYSTEMS IN LINDSAY AND EXETER, AND FOR MODIFICATION OF ORDERS IN APPLICATIONS NO. 1 AND NO. 15.

Application No. 204.

Decided October 3, 1912.

Applicant petitions for approval of issue of bonds and 6 per cent preferred stock in certain amounts, stating its intention to be to issue said bonds for new construction in an amount not to exceed 80 per cent of the cost thereof and to finance the balance of the cost with the proceeds derived from the sale of the preferred stock. Applicant was organized, had issued its common stock, and had taken certain other steps toward the promotion of its enterprise before the jurisdiction of this Commission attached.

Held. That the issuance of bonds and preferred stock of a par value greater in amount than the value of the property to be produced from the proceeds thereof is justified under the peculiar circumstances of this case (and Cases Nos. 213 and 216, same applicant), and should not be used as a precedent for other cases.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application of Central California Gas Company for permission to issue bonds and preferred stock, as will hereinafter appear in greater detail.

Applicant was incorporated under the laws of California on January 8, 1912, with an authorized capital stock of $100,000, consisting of one thousand (1,000) shares of the par value of $100 each. Of said shares

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500, representing a par value of $50,000, were common and 500, representing a par value of $50,000, were preferred. Of the stock so authorized, all the common stock and preferred stock of the face value of $15,000 were issued prior to March 23, 1912, to General Operating and Construction Company in return "for labor heretofore done." General Operating and Construction Company had entered into a contract with Central California Gas Company to build the latter's proposed gas plant near Lindsay. General Operating and Construction Company received the shares of stock, as hereinbefore stated, for certain alleged preliminary work in connection with the execution of the contract, and was to receive bonds in the face value of $40,000 for building the plant. Preferred stock of the face value of $6,500 was sold to citizens of Lindsay at par prior to March 23d. The remaining authorized preferred stock, amounting at the time to $28,500, was issued as part of the purchase price for the capital stock of the Home Gas Company of Porterville, under this Commission's order in Application No. 14. This disposed of all of applicant's authorized capital stock. Applicant has now increased its authorized capital stock from $100,000 to $500,000, consisting of 3,000 shares of 6 per cent preferred stock and 2,000 shares of common stock, all of the par value of $100 per share. Applicant asks permission now to issue preferred stock of the face value of $136,200 for the purposes specified in this application and in Applications No. 213 and No. 216.

By its order in Application No. 1, this Commission authorized the execution by applicant to the Los Angeles Trust and Savings Bank of a trust deed or mortgage to secure a maximum issue of $300,000 first mortgage forty year gold bonds, bearing interest at the rate of 6 per cent per annum. By its order in Application No. 14, this Commission authorized applicant to issue as part consideration for the purchase of the property of the Home Gas Company of Porterville, bonds of the face value of $31,500, which bonds have been issued by applicant. By its order in Application No. 191, this Commission authorized applicant to execute a new trust deed or mortgage to secure a maximum issue of $500,000 of 6 per cent bonds, to run for twenty years instead of forty years. Bonds of the face value of $31,000 under this authorization are to be exchanged for the $31,500 of bonds heretofore issued under the trust deed or mortgage as first authorized by this Commission. Applicant desires also to issue additional bonds in the face value of $219,000 for the purposes specified in this application and in Applications No. 213 and No. 216.

Applicant at present owns and operates the gas plant formerly belonging to the Home Gas Company of Porterville, and located in that city. In Applications No. 1 and No. 15, applicant presented a plan for supplying Lindsay and Exeter, and also Porterville, from a plant to be

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erected near Lindsay. Under that plan, the Porterville plant was to be used merely as an auxiliary. The Commission made its order authorizing the issue of stock and bonds under that plan. Applicant has now entirely revised its plans, and makes the present application and Applications No. 213 and No. 216 under the plans as so revised. Applicant now proposes to buy the property of Consolidated Heat, Light and Power Company, which supplies Visalia and Tulare with gas, and then to produce at its main plant in Visalia a supply of gas sufficient for Visalia, Tulare, Exeter, Lindsay, and Porterville, and the intervening territory. Transmission lines are to be built between Visalia, Exeter, Lindsay, and Porterville, distributing systems are to be constructed in Lindsay and Exeter, improvements are to be made to the plant in Visalia, and additions are to be made to the distributing systems in Visalia, Tulare, and Porterville. Applicant intends to make service connections free and to conduct an active campaign for business in the entire territory.

These plants make inoperative a portion of this Commission's orders on Applications No. 1 and No. 15.

In its order on Application No. 1, the Commission made its order conditioned on the surrender by General Operating and Construction Company to the Commission of the amount of the common stock of Central California Gas Company then in its hands, which amount was 365½ shares, to have stamped thereon the words "issued for control only and not to be transferred without the consent of the Railroad Commission." The certificate for these shares now stands in the name of the California Utilities Corporation, a construction company controlled by Mr. C. S. S. Forney, who is the organizer of the Central California Gas Company, and is on deposit with this Commission for its disposition. It will be remembered that these shares were issued to General Operating and Construction Company in connection with a plant which that company was to construct near Lindsay, which plant will now not be constructed. These shares should be used for control only, and should not be transferred without the consent of the Commission, and should not be treated as having value. The Commission will endorse on them the words "issued for control only and not to be transferred without the consent of the Railroad Commission," and will then redeliver the certificate.

Applicant now asks in this application for permission to issue stock and bonds as follows:

1. For the purpose of purchasing a gas holder and erecting and installing the same on land to be purchased as a site for said holder in the city of Porterville, to cost $10,000, applicant desires to issue bonds of the face value of $7,000 and preferred stock of the par value of $5,300.

2. For the purpose of constructing a transmission line from Porter-

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ville to Lindsay, to cost $31,250, applicant desires to issue bonds having a face value of $24,000 and preferred stock having a par value of $13,800.

3. For the purpose of constructing a transmission line from Lindsay to Exeter, to cost $17,500, applicant desires to issue bonds of the face value of $13,000 and preferred stock of the par value of $8,300.

4. For the purpose of constructing a distributing system in Lindsay, to cost $18,500, applicant desires to issue bonds of the face value of $14,000, and preferred stock of the par value of $8,400.

5. For the purpose of constructing a distributing system in Exeter, to cost $13,000, applicant desires to issue bonds of the face value of $10,000 and preferred stock of the par value of $5,700.

The face value of the bonds for none of these purposes is in excess of 80 per cent of the cost of the work and materials. The balance of the money in each case is to be derived from the sale of preferred stock. Applicant has entered into negotiations for the sale of its bonds, and believes that it can sell its bonds and its preferred stock so as to net therefrom at least 80 per cent of the face value of both bonds and stock. Of course, if applicant can secure a larger price, it will naturally do so. The Commission and the public desire always that the public utility secure the largest possible price for its securities. For a discussion of the probability of applicant's earnings being sufficient to pay interest on the bonds to be authorized, as well as operating expenses, see the opinion in Application No. 213.

I deem it wise to call attention at this time to the result of the action which I recommend be taken in this case. While the holder of preferred stock occupies no different relation to the public than does the holder of common stock, yet the buyer of such stock purporting to bear interest at a certain rate expects that the interest will be paid. When this Commission authorizes the issuance of bonds at 6 per cent and preferred at 6 per cent, in an aggregate sum in excess of the value of the property to be acquired from the proceeds thereof, and thereafter fixes rates on the fair value of the property devoted to the public service, it may follow that the purchaser of the preferred stock can not receive from the legitimate income which is the result of reasonable rates the interest which his preferred stock specifies.

Heretofore this Commission has only allowed issues of bonds against property in an amount substantially less than the value of the property. The difference necessary to be added in order to produce the property should ordinarily be raised from the sale of common stock the holders of which have no promise, implied or otherwise, that they will participate in any amount of dividends.

Notwithstanding these facts, I have advised the granting of this application and of Applications No. 213 and No. 216, and the issuance of

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bonds and preferred stock of a par value greater in amount than the value of the property to be produced from the proceeds thereof. I am convinced that this action is justified under the peculiar circumstances of this case, and the opinions and orders on these applications should not be used as a precedent for other cases. This company was one of those which was formed before the effective date of the Public Utilities Act. It had already issued its common stock and had taken certain other steps toward the promotion of its enterprise before the jurisdiction of this Commission attached. Heretofore, in dealing with its financial affairs, we have imposed certain conditions with a view to the ultimate consummation of the objects for which the company was formed, but have been more lenient in this regard than we would be if the enterprise were one which had its inception after the passage of the Public Utilities Act.

Considering that a wise exercise of discretion by this Commission would lead it to foster and not hamper the enterprises that had been organized under other conditions than those that now prevail, I believe that the present securities which we are authorizing will be of benefit to this corporation and to its present and prospective consumers. I believe, however, that the stockholders should be aware of the condition and that this utility should be warned that in the future the Commission will expect it to secure the funds necessary to supplement a bond issue from sources other than preferred stock.

I have examined applicant's estimates, and believe that the property to be acquired and the labor to be performed are reasonably necessary in the execution of applicant's plans of development, and that the purposes for which applicant desires authority in this application to issue stock and bonds are not in whole or in part reasonably chargeable to operating expenses or to income. The plan as now presented by applicant seems to offer a much better prospect for success than did the plan as first presented.

I recommend that the application be granted, and submit herewith the following form of order:

ORDER.

Central California Gas Company having applied to the Railroad Commission for the consent of the Commission to the issuance by said company of bonds and preferred stock in the amounts and for the purposes hereinafter specified, and a public hearing having been held on said application, and it appearing to the Commission that the purposes for which authorization is herein given to issue bonds and stock are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that the Railroad Commission of the State of California hereby authorizes the issue by Central California Gas Com-

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pany of bonds of said Company, maturing the first day of July, 1932, to bear interest at the rate of 6 per cent per annum, payable semiannually, on the first day of January, 1913, and on the first days of July and January of each year thereafter, under and in pursuance of the terms of a trust deed or mortgage substantially upon the terms and conditions set forth in the copy of the trust deed or mortgage which was annexed to Application No. 191, and 6 per cent preferred stock, in the amounts and for the purposes and upon the conditions hereinafter specified and not otherwise, to wit:

1. Applicant shall sell said bonds and said preferred stock hereby authorized so as to net the said company at least the amount specified in each subdivision respectively of subsection 2 hereof. Applicant shall, in any event, receive from the sale of its bonds at least 85 plus accrued interest.

2. The proceeds to be derived from the sale of said stock and bonds shall be applied only for the acquisition of property and for the construction, completion and extension of its facilities as follows:

(*a*) For the purpose of purchasing a gas holder and to erect and install the same on land to be purchased as a site therefor in the city of Porterville, and for accessories necessary in the operation of said holder, applicant is hereby authorized to issue its bonds of the face value of $7,000 and its preferred stock of the par value of $5,300, from the sale of which bonds and stock applicant shall net not less than $10,000.

(*b*) For the purpose of constructing a transmission line from Porterville to Lindsay, applicant is authorized to issue its bonds of the face value of $24,000 and its preferred stock of the par value of $13,800, from the sale of which applicant shall net not less than $31,250.

(*c*) For the purpose of constructing a transmission line from Lindsay to Exeter, applicant is authorized to issue its bonds of the face value of $13,000, and its preferred stock of the par value of $8,300, from the sale of which applicant shall net not less than $17,500.

(*d*) For the purpose of constructing a distributing system in Lindsay, applicant is authorized to issue its bonds of the face value of $14,000 and its preferred stock of the par value of $8,400, from the sale of which applicant shall net not less than $18,500.

(*e*) For the purpose of constructing a distributing system in Exeter, applicant is authorized to issue its bonds of the face value of $10,000 and its preferred stock of the par value of $5,700, from the sale of which applicant shall net not less than $13,000.

3. Central California Gas Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, applicant shall make verified reports to this Commission stating the sale or sales

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of said stock or bonds during the previous month, the terms and conditions of the sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

4. Certificate No. 41 of the capital stock of Central California Gas Company for 365½ shares, now standing in the name of California Utilities Corporation, shall never be transferred unless the consent of this Commission to such transfer shall first have been secured, said certificate having been issued for control only.

5. This Commission's orders on Applications No. 1 and No. 15, in so far as they conflict with the order in this case, are hereby amended to that extent, but not otherwise.

6. The authority hereby given to issue stock and bonds shall apply only to stock and bonds issued by the Central California Gas Company prior to the thirtieth day of June, 1913.

7. This order shall not become effective until the payment by applicant of the minimum fee, as prescribed in this Commission's order on Application No. 213.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

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DECISION NO. 252.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY TO PURCHASE THE PROPERTY OF CONSOLIDATED HEAT, LIGHT AND POWER COMPANY, EXCEPT THE SOLVENT CREDITS THEREOF, AND OF CONSOLIDATED HEAT, LIGHT AND POWER COMPANY TO SELL SAID PROPERTY TO CENTRAL CALIFORNIA GAS COMPANY, AND OF CENTRAL CALIFORNIA GAS COMPANY FOR AUTHORITY TO ISSUE BONDS OF THE FACE VALUE OF ONE HUNDRED AND NINETEEN THOUSAND DOLLARS AND PREFERRED STOCK OF THE PAR VALUE OF SEVENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS IN PAYMENT FOR SAID PROPERTY.

Application No. 213.

Decided October 3, 1912.

Ordered. That applicant be permitted to acquire all the property of another utility and to issue its capital stock and bonds in the amounts stated, the proceeds from the sale thereof to be used for the purposes specified.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application of Central California Gas Company for permission to purchase all of the property of Consolidated Heat, Light and Power Company, except its solvent credits, and of Consolidated Heat, Light and Power Company to sell said property to Central California Gas Company, and of Central California Gas Company to issue bonds of the face value of $119,000 and preferred stock of the par value of $75,500, the proceeds thereof to be used for the purchase of said property.

The property of Consolidated Heat, Light and Power Company consists of real estate and buildings in Visalia and Tulare, a manufacturing plant at Visalia, a distributing system in Visalia and Tulare and a transmission main between Visalia and Tulare. As already stated in the opinion on Application No. 204, applicant intends to manufacture at the gas plant in Visalia, gas sufficient to supply not merely the territory at present served by the Consolidated Heat, Light and Power Company, but also Exeter, Lindsay and Porterville and the intervening territory in addition thereto. Applicant presented a statement of the estimated value new, and of the cost to reproduce new the properties of the Con-

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solidated Heat, Light and Power Company, and also of the estimated present value of the property. This statement is as follows:

	Value new or cost to reproduce.	Present value.
Real estate and buildings	$11,575	$10,000
Manufacturing plant	39,295	33,670
Distributing system, Visalia	50,628	42,711
Transmission main, Visalia and Tulare	24,076	18,297
Distributing system, Tulare	19,907	17,260
Physical overhead charges, 20 per cent	29,096	24,387
Total physical value	$174,577	$146,325
Add 10 per cent for going value, good will, etc.	17,457	14,632
Total value	$192,034	$160,957

Applicant presented a balance sheet showing the financial condition of Consolidated Heat, Light and Power Company as of July 1, 1912, but it is impossible to ascertain therefrom the present value of the property which Central California Gas Company desires to purchase. While I am of the opinion, from the check of the items submitted, that the sum of $160,000 is somewhat in excess of the real value of the property of Consolidated Heat, Light and Power Company, I am convinced that if this were simply an application to issue stock and bonds I would be justified in recommending the amount of securities hereby authorized. With reference to the preferred stock see the opinion on Application No. 204. The order should provide that the sum of $160,000 shall not be taken to represent the present value of this property in any proceeding hereafter taken, either before this Commission or any other public authority.

To purchase this property, applicant desires to issue its 6 per cent bonds of the face value of $119,000, and its 6 per cent preferred stock, of the par value of $75,500, which bonds and stock applicant believes it can sell so as to derive therefrom the sum of $160,000.

If applicant shall issue the stock and bonds applied for in this application and in Applications Nos. 204 and No. 216, it will have outstanding bonds of the face value of $250,000 and preferred stock of the par value of $186,200, or thereabouts, making a total issue of stock and bonds on which applicant will intend to pay dividends and interest at the rate of 6 per cent per annum of something over $436,000. As bearing on the question whether applicant can reasonably be expected to meet these interest and dividend obligations, applicant was questioned closely as to its present and prospective gross and net earnings. In this connection, Mr. Forney, applicant's organizer, testified that the gross revenue from the Porterville plant for the year ending June 1, 1912, was $12,000, and from the plants at Visalia and Tulare, some $37,000. Applicant believes, that with the new territory to be served and additional business

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to be secured by active campaigning in the present territory, the gross revenue should increase to $90,000 for the year ending June 1, 1913. If operating expenses were sixty per cent, this would leave a net revenue of $36,000, of which some $26,000 would be paid for dividends and interest, leaving about $10,000 for renewal fund. While the Commission, of course, can make no statement as to the accuracy of these estimates, I am convinced that there is a reasonable probability of applicant's ability to meet the interest payments on its bonds, and possibly also the dividends on the preferred stock.

I consider that from the point of view of economic administration, applicant's present plan is a desirable one. I recommend that the application be granted, and submit herewith the following form of order:

ORDER.

Central California Gas Company having applied to the Railroad Commission for the consent of the Commission to the purchase of the property of Consolidated Heat, Light and Power Company, except its solvent credits, and Consolidated Heat, Light and Power Company having applied for permission to sell said property to Central California Gas Company, and Central California Gas Company having applied for the consent of this Commission to the issuance by said company of bonds to the amount of $119,000, face value, said bonds to be payable on the first day of July, 1932, and to bear interest at the rate of 6 per cent per annum, payable semiannually, and secured by a trust deed or mortgage upon the property of the company, and also of preferred stock of the par value of $75,500, to pay for said property, and a public hearing having been held upon said application, and it appearing to the Commission that public convenience and necessity will be subserved by the sale and purchase of said property, as applied for, and that the purposes for which said stock and bonds are to be issued are not reasonably chargeable to operating expenses or to income.

It is hereby ordered as follows:

1. Central California Gas Company is hereby authorized to purchase all of the property of Consolidated Heat, Light and Power Company, except the solvent credits thereof, and Consolidated Heat, Light and Power Company is hereby authorized to sell all said property to Central California Gas Company on the terms and conditions hereinafter specified.

2. The Railroad Commission hereby authorizes the issue by Central California Gas Company of $119,000, face value, of principal of bonds of said company, maturing the first day of July, 1932, to bear interest at 6 per cent per annum, payable semiannually, under and in pursuance of the provisions of the deed of trust or mortgage, the execution

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whereof was authorized by order of this Commission in Application No. 191, and also its preferred stock to the amount of $75,500, par value, on the following conditions, and not otherwise, to wit:

(*a*) Central California Gas Company shall sell said bonds and said stock hereby authorized so as to net the said company not less than $160,000, and shall apply the proceeds thereof only for the purpose of acquiring the property, except the solvent credits, of Consolidated Heat, Light and Power Company, for which property said Central California Gas Company is authorized to pay an amount not in excess of said sum of $160,000. Applicant shall in any event receive from the sale of its bonds at least 85 plus accrued interest.

(*b*) Central California Gas Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the stock and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission stating the sale or sales of said stock and bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with the provisions of General Order No. 24 of this Commission, which, in so far as applicable, is made a part of this order.

3. The sum of $160,000 for which Central California Gas Company is hereby authorized to buy the property of the Consolidated Heat, Light and Power Company shall not be taken before this Commission or any other public authority as representing for rate fixing or any other purpose, the present value of the property of the Consolidated Heat, Light and Power Company.

4. The authority hereby given to issue stock and bonds shall apply only to stock and bonds issued by applicant on or before the thirtieth day of June, 1913.

5. As Applications No. 204, No. 213 and No. 216 are all a part of one general plan and were heard at the same time, they will be considered together for the purpose of the fee specified in section 57 of the Public Utilities Act. The payment of the minimum fee prescribed in said section shall be a condition precedent to the effectiveness of this Commission's order on this application and on Applications No. 204 and No. 216.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

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DECISION NO. 253.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS AND STOCK FOR THE PURPOSE OF CONSTRUCTING MAIN TRANSMISSION LINES FROM EXETER TO VISALIA AND FOR THE CONSTRUCTION OF ADDITIONS TO GAS PLANT AT VISALIA AND DISTRIBUTING SYSTEMS IN VISALIA AND TULARE.

Application No. 216.

Decided October 3, 1912.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

Central California Gas Company asks authority to issue bonds of the face value of $20,000 and preferred stock of the par value of $11,800, and to use the proceeds thereof for the construction of a main transmission line between Exeter and Visalia, and also for the issuance of bonds of the face value of $12,000 and preferred stock of the par value of $7,400, for the construction of additions to the gas plant at Visalia and the distributing systems in Visalia and Tulare. This work is part of applicant's general plan, which has already been discussed in this Commission's opinions in Applications No. 204 and No. 213, to which reference is hereby made. Applicant thinks that it can sell the bonds and stock in connection with the transmission line from Exeter to Visalia so as to net it at least $26,250, which amount it estimates will cover the work, and that it can sell the bonds and stock in connection with the additions to the gas plant at Visalia and to the distributing systems in Visalia and Tulare for $16,000, the estimated cost of the work.

I find that the expenditures proposed are reasonable for the purposes specified, in pursuance of applicant's general plan, and that said purposes are not reasonably chargeable to operating expenses or to income. With reference to the preferred stock, see the opinion in Application No. 204.

I recommend that the application be granted and submit herewith the following form of order:

ORDER.

Central California Gas Company having applied to the Railroad Commission for the consent of the Commission to the issuance by said com-

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pany of bonds in the amounts hereinafter specified, said bonds to be payable on the first day of July, 1932, and to bear interest at the rate of 6 per cent per annum, payable semiannually, and secured by trust deed or mortgage upon all the property of the company, and also of preferred stock, in the amounts and for the purposes hereinafter specified, and a public hearing having been held upon said application and the Commission finding that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

It is hereby ordered that the Railroad Commission hereby authorize the issue by said Central California Gas Company of bonds of said company, maturing the first day of July, 1932, bearing interest at 6 per cent per annum, payable semiannually, under and in pursuance of the terms of the mortgage authorized by this Commission's order in Application No. 191, and of its 6 per cent preferred stock, in the amounts and for the purposes and under the conditions following and not otherwise, to wit:

1. For the purpose of constructing a transmission line from Exeter to Visalia, applicant is hereby authorized to issue bonds of the face value of $20,000 and preferred stock of the par value of $11,800, from the sale of which applicant shall net not less than $26,250.

2. For the purpose of paying for the necessary material and the construction of additions to the gas plant at Visalia and the distributing systems in Visalia and Tulare, as specified in the application, applicant is authorized to issue its bonds of the face value of $12,000, and its preferred stock of the par value of $7,400, from the sale of which applicant shall net not less than $16,000. Applicant shall in any event receive from the sale of its bonds at least 85 plus accrued interest.

3. Central California Gas Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the stock and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission stating the sale or sales of said stock and bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with the provisions of General Order No. 24 of this Commission, which, in so far as applicable, is made a part of this order.

4. The authority hereby given to issue stock and bonds shall apply only to stock and bonds issued by applicant on or before the thirtieth day of June, 1913.

5. This order shall not become effective until the payment by applicant of the minimum fee as prescribed in this Commission's order on Application No. 213.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

DECISION No. 254.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS A PUBLIC HIGHWAY AT ITALIAN-SWISS WINERY, MADERA COUNTY, CALIFORNIA.

Application No. 244.

Decided October 3, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 1, 1912, filed with the Commission its application for permission to construct a spur track at grade across the county road at Italian-Swiss Winery, Madera County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid a grade crossing of the said county road and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct its spur track at grade across the county road in Italian-Swiss Winery, Madera County, California, as shown by map attached to the application, subject to the following conditions, viz:

1. The entire expense of constructing the crossing, together with the cost of its maintenance hereafter in a good and first-class condition for the safe and convenient use of the public, shall be borne by the applicant.

2. Applicant shall also provide the necessary crossing plank or guard rail for the construction of the crossing and build the crossing of sufficient width and otherwise to permit the safe and easy passage of vehicles and other road traffic.

3. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and pro-

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tection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

DECISION No. 255.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A PASSING TRACK AT GRADE ACROSS BROADWAY STREET, IN THE TOWN OF CALIFA, MADERA COUNTY, CALIFORNIA.

Application No. 245.

Decided October 3, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 1, 1912, filed with the Commission its application for permission to construct a passing track at grade across Broadway street, Califa, Madera County, California; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the town of Califa is not an incorporated town, that it is not reasonable nor practicable to avoid a grade crossing of the said street, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted the Southern Pacific Company to construct a passing track at grade across Broadway street, in the town of Califa, Madera County, California, as shown by the map attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by the applicant.

(2) Applicant shall provide the necessary crossing plank or guard rail for the construction of the crossing and shall construct same not less than forty-eight (48) feet in length and shall ballast the crossing with first-class gravel or stone ballast to a depth of not less than six (6) inches.

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(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

DECISION NO. 256.

GRAYSON-OWEN COMPANY ET AL.
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 295.

Decided October 3, 1912.

Complaint alleges that respondent company had applied through commodity rates to shipments instead of a lower combination of intermediate rates, and that the rates so charged were unjust and unreasonable, in so far as they exceeded the combination of the intermediate rates, and asking for reparation. Cases Nos. 226, 230 and 248 discussed.

Held, The through commodity rate does not supersede nor prevent a combination of intermediate class and commodity rates in accordance with Rule VIII (*a*) of this Commission's Tariff Circular No. 2.

J. O. Bracken, for complainants.

C. W. Durbrow and *George D. Squires*, for defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an action to recover alleged overcharges on carload shipments of cattle, sheep and hogs, between points within the State of California over the lines of defendant, the Southern Pacific Company, such shipments moving between April 1, 1910, and December 22, 1911.

Complainants allege that the defendant applied through commodity rates to the shipments involved instead of a lower combination of intermediate rates made by using class rates from points of origin to West Berkeley, a point intermediate to the point of destination, plus a switching rate from West Berkeley to Stockyards, the destination of the shipments, and that the rates so charged were unjust and unreasonable in so far as they exceeded the combination of the intermediate rates;

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and that complainants suffered thereby to the extent of difference between the rates charged and those which complainants claim should have been charged.

At the hearing it was stipulated by counsel that the case should be submitted on the evidence offered in cases Nos. 226, 230 and 248, heretofore heard and decided by this Commission, and a rather careful analysis of the decisions in those cases is therefore in order.

In Case No. 226, the complainant questioned the right of the defendant carrier to apply to live stock shipments a through commodity rate which was higher than the through class B rate under which live stock moves "when not otherwise provided for" or a combination of class and commodity rates.

The Commission held in this case that the through class rate was inapplicable for the reason that rates on live stock *were* otherwise provided for by through commodity rates between points of origin and destination involved. The Commission held also in this case, as it had held in Case No. 222, that as to shipments moving prior to November 21, 1910, the through commodity rate must govern regardless of the possible lower combination of intermediate rates (see Tariff Circular No. 1, Rule 7*a*), but as to shipments moving subsequent to November 21, 1910, the provision of Rule 7*a* as amended by Supplement to Tariff Circular No. 1 would govern and the lowest combination of intermediate rates would apply.

In Case No. 230, the complaint went directly to the reasonableness of a through rate which was in excess of a combination of intermediate rates, and the Commission decided that the through rate was unreasonable in so far as it exceeded the aggregate of the intermediate rates.

In Case No. 248, the question at issue was in no way similar to the matter under consideration. We regard the issue in Case No. 248 as but another phase of one of the questions presented in Case No. 226, namely, as to whether a through commodity rate on live stock took precedence over a through class rate which was restricted in the tariff of defendant carrier, so as to apply only when commodity rates were not otherwise provided for. The decision therefore in Case No. 248 is but a corollary of the Commission's decision in Case No. 226. The issue in the case at bar is the same as that presented in Case No. 226, namely, whether the shipper is entitled to the benefit of the combination of the intermediate rates either class or commodity when such are found lower than the through commodity rate, for we cannot agree with the contention of defendant that "only by the widest stretch of imagination can the rate of charge for switching be called a rate" nor can we agree with the defendant's contention that by reason of this Commission's decision in Case No. 226, all rates whether combination or otherwise applicable to live stock shipments between points of origin and destina-

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tion here involved were superseded by the publication of through commodity rates on live stock between said points. The only rates which are superseded by the publication of through commodity rates on live stock between the several points of origin here involved and Stockyards, the point of destination, are the through *class rates* between the points of origin and Stockyards and then in so far only as they might be applicable to live stock shipments.

As the Commission said in Case No. 226, *supra*, the through commodity rate does not supersede nor prevent a combination of intermediate class and commodity rates in accordance with Rule 7(*a*) of this Commission's Tariff Circular No. 1, as amended in Supplement No. 2, which has been reaffirmed as Rule 8(*a*) of this Commission's Tariff Circular No. 2.

As to the defendant's contention that it is improper to base a combination of rates on an intermediate point such as West Berkeley where there are no facilities maintained for unloading live stock, we can but reaffirm the opinion expressed in Case No. 226, *supra*, that although stock shipments are rarely ever made to West Berkeley, nevertheless, the defendant in publishing the class rate to West Berkeley has opened the way for the application of the combination rate and such combination rate is the rate that should have been applied by defendant as to those shipments which moved subsequent to November 21, 1910.

As to the shipments which moved prior to November 21, 1910, the rate in effect and operation at that time was a through commodity rate which was the rate applied. As to this rate, the complainants have specifically pleaded that it was an unjust and unreasonable rate and on the facts presented in the case, the Commission finds that the through commodity rate between the several points of origin here involved and Stockyards, which is the destination, applied to the shipments in question which moved prior to November 21, 1910, was unjust and unreasonable and that a just and reasonable rate would not have exceeded the aggregate of the class rates to West Berkeley plus the switching charge of $2.50 per car West Berkeley to Stockyards.

I therefore recommend that the following order be issued:

ORDER.

Complainants, the Grayson-Owen Company, a corporation, and F. Cames and Joseph Casalet, doing business under the name and style of Cames & Casalet, having complained to this Commission that the application of certain rates on live stock from and to points in California published by defendant carrier were wrong and that said rates were unjust and unreasonable in that the through commodity rate exceeded the combination of the rate to an intermediate point plus the switching charge to destination, and a hearing having been duly held

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and the matters and things set forth in the complaint and answer and developed by the testimony having been duly considered, and the Commission finding that on certain of the shipments comprehended in the complaint the through commodity rate was charged and collected where the class rate to an intermediate point plus a switching charge to destination making less than the through commodity rate should have been charged and collected, and also that on other shipments comprehended in the complaint which moved prior to November 21, 1910, the rate was unjust and unreasonable to the extent that the through commodity rate exceeded the sum of intermediate rates. Now, therefore,

It is ordered that the defendant, the Southern Pacific Company, pay to the complainants, Grayson-Owen Company, the amount of the difference between the through commodity rate and the sum of the intermediate rates on shipments which moved prior to November 21, 1910, said shipments being set forth in statement No. 1 attached and said sum amounting to sixteen and 45/100 (16.45) dollars, and that the said defendant, the Southern Pacific Company, pay to said complainants, the amount of the difference between the through commodity rate from points of origin to destination at Stockyards and the class rate from same points of origin to West Berkeley plus the switching rate from West Berkeley to destination at Stockyards of $2.50 per car on shipments which moved subsequent to November 21, 1910, said shipments being set forth in statement No. 2 attached and said sum amounting to forty-seven and 2/100 (47.02) dollars;

And it is further ordered that the said defendant, the Southern Pacific Company, pay to said complainants, F. Cames and Joseph Casalet, doing business as Cames and Casalet, the amount of the difference between the through commodity rate and sum of the intermediate rates on shipments which moved prior to November 21, 1910, said shipments being set forth in statement No. 3 attached and said sum amounting to ninety-one and 55/100 (91.55) dollars and that the said defendant, the Southern Pacific Company, pay to said complainants the amount of the difference between the through commodity rate from points of origin to destination at Stockyards and the class rates from same points of origin to West Berkeley, plus the switching rate from West Berkeley to destination at Stockyards of $2.50 per car on shipments which moved subsequent to November 21, 1910, said shipments being set forth in statement No. 4 attached and said sum amounting to one hundred and six and 73/100 (106.73) dollars.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of October, 1912.

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STATEMENT No. 1.

Shipments to Grayson-Owens Company Prior to November 21, 1910.

From	To	Waybill reference.	Car.	Length of car.	Charges.	Should be Class B.	Charges.
Crows Landing	Stockyards	869, July 12, 1910	OSL 14056	36 feet	$33 04	1 36-foot car, 118 per cent of $23.50	$27 73
						1 car at $2.50 per car	2 50
Banta	Stockyards	126, Aug. 26, 1910	SP 76272	35 feet	23 00	1 35-foot car, 115 per cent of $12.00	13 80
Banta	Stockyards	127, Aug. 26, 1910	UP 60524	36 feet	23 60	1 36-foot car, 118 per cent of $12.00	14 16
						2 cars at $2.50 per car	5 00
					$79 64		$63 19
						Overcharge	$16 45

STATEMENT No. 2.

Shipments to Grayson-Owens Company Subsequent to November 21, 1910.

Livingston	Stockyards	660, Dec. 28, 1910	UP 60251	36 feet	$38 94		
Livingston	Stockyards	4, Jan. 3, 1911	OSL 13088	36 feet	38 94	4 36-foot cars, 118 per cent of $26.50 per car	
Livingston	Stockyards	10, Jan. 9, 1911	OSL 12807	36 feet	38 94	or $31.27 each	$125 08
Livingston	Stockyards	14, Jan. 16, 1911	OSL 12710	36 feet	38 94	4 cars at $2.50 each	10 00
Milton	Stockyards	172, June 22, 1911	MLT 14393	36 feet	29 50	1 36-foot car, 118 per cent of $18.00	21 24
						1 car at $2.50	2 50
Tracy	Stockyards	275, June 26, 1911	UP 62225	36 feet	23 60	1 36-foot car, 118 per cent of $12.00	14 16
						1 car at $2.50	2 50
Modesto	Stockyards	4866, Nov. 22, 1911	OWRN 40132	36 feet	30 68	1 36-foot car, 118 per cent of $18.00	21 24
Modesto	Stockyards	5364, Dec. 22, 1911	SP 76128	35 feet	29 90	1 35-foot car, 115 per cent of $18.00	20 70
						2 cars at $2.50 each	5 00
					$269 44		$222 42
						Overcharge	$47 02

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STATEMENT No. 3.

Shipments to F. Carnes and Joseph Casalet Prior to November 21, 1910.

From	To	Waybill reference.	Car.	Length of car.	Charges.	Should be Class B.	Charges.
Athlone	Stockyards	39, Apr. 1, 1910	OSL 13391	36 feet	$43 66		
Athlone	Stockyards	40, Apr. 1, 1910	SP 77726	36 feet	43 66		
Athlone	Stockyards	17, May 4, 1910	LW 13931	36 feet	43 66		
Athlone	Stockyards	18, May 4, 1910	SP 77457	35 feet	42 55	8 36-foot cars, 118 per cent of $34 per car or $40.12 each	$320 96
Athlone	Stockyards	153, May 21, 1910	GH 14643	36 feet	43 66		
Athlone	Stockyards	192, June 7, 1910	SP 75899	35 feet	42 55		
Athlone	Stockyards	207, Aug. 1, 1910	SP 76515	35 feet	42 55		
Athlone	Stockyards	308, Aug. 3, 1910	GH 14704	36 feet	43 66		
Athlone	Stockyards	308, Aug. 3, 1910	SP 75598	35 feet	42 55		
Athlone	Stockyards	308, Aug. 3, 1910	SP 75106	36 feet	43 66		
Athlone	Stockyards	308, Aug. 3, 1910	OSL 13893	36 feet	43 66	5 35-foot cars, 115 per cent of $34 per car or $39.10 each	195 50
Athlone	Stockyards	335, Aug. 11, 1910	SP 75514	35 feet	42 55		
Athlone	Stockyards	347, Aug. 29, 1910	MLT 14131	36 feet	43 66	13 cars at $2.50 each	32 50
							$548 96
					$562 03	Overcharge	13 07
Livingston	Stockyards	205, June 10, 1910	OSL 12586	36 feet	$38 94		
Livingston	Stockyards	206, June 10, 1910	GH 14771	36 feet	38 94		
Livingston	Stockyards	226, June 21, 1910	SP 76176	35 feet	37 95		
Livingston	Stockyards	227, June 21, 1910	UP 60605	36 feet	38 94		
Livingston	Stockyards	228, June 21, 1910	OSL 13161	36 feet	38 94	9 36-foot cars, 118 per cent of $26.50 per car or $31.27 each	$281 43
Livingston	Stockyards	229, June 21, 1910	UP 60548	36 feet	38 94		
Livingston	Stockyards	262, July 13, 1910	SP 76338	35 feet	37 95		
Livingston	Stockyards	263, July 13, 1910	SP 75929	35 feet	37 95		
Livingston	Stockyards	264, July 13, 1910	UP 62257	36 feet	38 94		
Livingston	Stockyards	265, July 13, 1910	SP 77637	35 feet	37 95	2 35-foot cars, 115 per cent of $26.50 per car or $30.48 each	60 96
Livingston	Stockyards	336, Aug. 15, 1910	MLT 14373	36 feet	38 94	11 cars at $2.50 each	27 50
							$369 89
					$424 38	Overcharge	54 49

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STATEMENT NO. 3—Continued.

Shipments to F. Carnes and Joseph Casalet Subsequent to November 21, 1910.

From	To	Waybill reference.	Car.	Length of car.	Charges.	Should be Class B.	Charges.
Merced	Stockyards	490, Apr. 15, 1910	OSL 13843	36 feet	$42 48		
Merced	Stockyards	1777, Apr. 30, 1910	UP 62123	36 feet	42 48		
Merced	Stockyards	1778, Apr. 30, 1910	SP 77523	36 feet	41 40	6 36-foot cars, 118 per cent of $31 per car or	
Merced	Stockyards	1779, Apr. 30, 1910	SP 77547	36 feet	41 40	$36.58 each	$219 48
Merced	Stockyards	1780, Apr. 30, 1910	UP 60697	36 feet	42 48		
Merced	Stockyards	2028, May 14, 1910	SP 77374	35 feet	41 40		
Merced	Stockyards	2600, June 23, 1910	UP 60019	36 feet	42 48	1 35-foot car, 115 per cent of $31 per car or $35.65 each	35 65
						7 cars at $2.50 per car	17 50
					$294 12		$272 63
						Overcharge	21 49
Newman	Stockyards	2877, Nov. 2, 1910	SP 76581	30 feet	$31 00	1 30-foot car	$26 00
						1 car at $2.50	2 50
							$28 50
						Overcharge	2 50
						Total overcharge	91 55

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STATEMENT No. 4.

Shipments to F. Carnes and Joseph Casalet Subsequent to November 21, 1910.

From	To	Waybill reference.	Car.	Length of car.	Charges.	Should be Class B.	Charges.
Athlone	Stockyards	452, Dec. 2, 1910	UP 62331	36 feet	$43 66		
Athlone	Stockyards	245, June 21, 1911	SP 74537	36 feet	43 66	3 36-foot cars, 118 per cent of $34 per car or $40.12 each	$120 36
Athlone	Stockyards	246, June 21, 1911	SP 76164	35 feet	42 55		
Athlone	Stockyards	247, June 21, 1911	UP 62037	36 feet	43 66	1 35-foot car, 115 per cent of $34 per car or $39.10	39 10
						4 cars at $2.50 per car	10 00
					$173 53		$169 46
						Overcharge	4 07
Newman	Stockyards	3245, Dec. 21, 1910	UP 62279	36 feet	$36 58	1 36-foot car, 118 per cent of $26 per car or 30.68	$30 68
						1 car at $2.50	2 50
							$33 18
						Overcharge	3 40
Milton	Stockyards	201, July 6, 1911	SP 76614	35 feet	$28 75	1 35-foot car, 115 per cent of $18 per car or 20.70	$20 70
Milton	Stockyards	202, July 6, 1911	UP 60951	36 feet	29 50		
Milton	Stockyards	203, July 6, 1911	UP 62519	36 feet	29 50	3 36-foot cars, 118 per cent of $18 per car or $21.24 each	63 72
Milton	Stockyards	204, July 6, 1911	ORN 13193	36 feet	29 50		
						4 cars at $2.50 per car	10 00
					$117 25		$94 42
						Overcharge	22 83

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STATEMENT NO. 4—Continued.

Shipments of F. Carnes and Joseph Casalet Subsequent to November 21, 1910.

From	To	Waybill reference.	Car.	Length of car.	Charges.	Should be Class B.	Charges.
Livingston	Stockyards	333, July 11, 1911	OSL 14115	36 feet	$38 94		
Livingston	Stockyards	336, July 12, 1911	SP 77301	35 feet	37 95		
Livingston	Stockyards	352, Aug. 28, 1911	OSL 12972	36 feet	38 94	6 36-foot cars, 118 per cent of $26.50 per car or $31.27 each	$187 62
Livingston	Stockyards	420, Sept. 5, 1911	SP 77340	35 feet	37 95		
Livingston	Stockyards	421, Sept. 5, 1911	OSL 12541	36 feet	38 94		
Livingston	Stockyards	439, Sept. 11, 1911	OSL 14051	36 feet	38 94		
Livingston	Stockyards	440, Sept. 11, 1911	OSL 14106	36 feet	38 94		
Livingston	Stockyards	441, Sept. 11, 1911	GH 13517	35 feet	37 95		
Livingston	Stockyards	623, Oct. 30, 1911	SP 77302	35 feet	35 65	5 35-foot cars, 115 per cent of $26.50 per car or $30.48 each	152 40
Livingston	Stockyards	624, Oct. 30, 1911	SP 77449	35 feet	35 65		
Livingston	Stockyards	625, Oct. 30, 1911	OSL 13229	36 feet	36 58	11 cars at $2.50 per car	27 50
					$116 43		$367 52
						Overcharge	48 91
Tracy	Stockyards	641, July 26, 1911	OSL 13847	36 feet	$23 60		
Tracy	Stockyards	642, July 26, 1911	SP 77232	35 feet	23 00	3 36-foot cars, 118 per cent of $12 per car or 14.16 each	$42 48
Tracy	Stockyards	95, Aug. 7, 1911	OSL 14054	36 feet	23 60	1 35-foot car, 115 per cent of $12	13 80
Tracy	Stockyards	96, Aug. 7, 1911	SP 74614	36 feet	23 60	4 cars at $2.50 per car	10 00
					$93 80		$66 28
						Overcharge	27 52
						Total overcharge	106 73

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DECISION NO. 257.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS A PUBLIC HIGHWAY NEAR TOWLE, PLACER COUNTY, CALIFORNIA.

Application No. 242.

Decided October 5, 1912.

REPORT OF THE COMMISSION.

Pacific Gas and Electric Company, a corporation, having in September 27, 1912, filed with the Commission its application for permission to construct a spur track at grade across a public highway in Placer County, California, as hereinafter indicated and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured permission to construct said crossing at grade from the board of supervisors of Placer County, California; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing of said public highway and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Pacific Gas and Electric Company to construct a spur track at grade across the public highway leading from the town of Towle to Emigrant Gap in Placer County, California, at a point about five (5) miles north of said town of Towle and as shown by the map attached to the application subject to the following conditions, viz:

(1) The entire expense of constructing crossing, together with the cost of its maintenance hereafter in good and first class condition for the safe and convenient use of the public, shall be borne by the applicant.

(2) Applicant shall also provide the necessary plank or guardrails and shall construct the crossing of an effective width not less than twenty-four (24) feet and with grades of approach not exceeding eight (8) per cent. The crossing shall be ballasted with stone, gravel or other suitable material.

(3) A suitable signal post shall be erected at the crossing marked "Railroad Crossing look out for cars," in black letters not less than six (6) inches in height on white background. Applicant shall furthermore operate its trains over said crossing under control, and such trains shall give proper signals with whistle and bell while approaching.

(4) The Commission reserves the right to make such further orders

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relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1912.

DECISION No. 258.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A TEAM TRACK AT GRADE ACROSS MOUNTAIN VIEW STREET IN THE TOWN OF FILLMORE, VENTURA COUNTY, CALIFORNIA.

Application No. 250.

Decided October 5, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 3, 1912, filed with the Commission its application for authority to construct a team track at grade across Mountain View street in the town of Fillmore, Ventura County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the town of Fillmore is not an incorporated town, that it is not reasonable nor practicable to avoid grade crossing with said street and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a team track at grade across Mountain View street, between Main street and Santa Clara street, in the town of Fillmore, Ventura County, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) That the entire expense of constructing the crossing together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) That applicant shall provide at its own expense the necessary plank or guardrails for the crossing and shall construct it of a width

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not less than forty-eight (48) feet, with grades of approach not exceeding eight (8) per cent, and shall ballast the crossing together with approaches thereto with first-class gravel or broken stone ballast to a depth of not less than six (6) inches.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1912.

DECISION No. 259.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES UNDER FRANCHISES HERETOFORE GRANTED BY THE TOWNS OF SUISUN CITY, FAIRFIELD, AND DIXON.

Application No. 251.

Decided October 5, 1912.

REPORT OF THE COMMISSION.

Great Western Power Company having, on May 6, 1912, filed with this Commission its application No. 35, being in part for a preliminary order under the provisions of section 50*c* of the Public Utilities Act, declaring that this Commission will hereafter, upon application, issue a certificate that public convenience and necessity require the exercise of rights or privileges under franchises not then but thereafter to be secured from the towns of Suisun City, Fairfield and other cities and towns in Solano County, and this Commission having on June 18, 1912, rendered its decision in the above mentioned application No. 35, in which it rendered the order therein applied for, and the franchises therein mentioned having now been granted by the towns of Suisun City and Fairfield, and also by the town of Dixon, in Solano County, to the Great Western Power Company, to wit:

By Ordinance No. 143 of the town of Suisun City, passed and

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approved by the board of trustees thereof on September 4, 1912, and by Ordinance No. 50 of the town of Fairfield, passed and adopted by the board of trustees thereof on September 10, 1912, and by Ordinance No. 144 of the town of Dixon, passed and adopted by the board of trustees thereof October 1, 1912, in all of which franchises applicant is granted the right to construct, maintain, and operate electrical transmission and distribution lines and equipment in said towns; and

Great Western Power Company having now applied to this Commission for a certificate that public convenience and necessity require the exercise of rights and privileges granted to it under the above mentioned franchises,

It is hereby declared that public convenience and necessity require the exercise of the rights and privileges granted to applicant, Great Western Power Company, by the town of Suisun City in its said Ordinance No. 143, and by the town of Fairfield in its said Ordinance No. 50, and by the town of Dixon in its said Ordinance No. 144; and the present application of Great Western Power Company is accordingly granted.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1912.

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DECISION No. 260.

IN THE MATTER OF THE RATES OF THE EAST SIDE CANAL AND IRRIGATION COMPANY.

Case No. 309.

Decided October 5, 1912.

Upon consumers' complaint against rates charged by respondent for water. *Ordered*, That the Commission inquire into the matter on its own initiative.

REPORT OF THE COMMISSION.

ORDER.

Whereas numerous citizens and residents of Merced County have filed with this Commission a petition, dated October 5, 1912, complaining of the rates charged by the East Side Canal and Irrigation Company for serving water to such residents of Merced County; and

Whereas this Commission finds that public necessity requires that a public hearing be held in this matter on Friday the 11th day of October, 1912, on less than ten days' notice,

It is hereby ordered that this Commission institute, on its own initiative, under the provisions of section 60 of the Public Utilities Act, an inquiry into the matter entitled as above, and that the secretary of this commission be and he is hereby instructed to notify said East Side Canal and Irrigation Company to appear before this Commission on Friday, the 11th day of October, 1912, at 10 o'clock a. m., in the justice of the peace courtroom, in the courthouse at Merced, California, before Commissioners Gordon and Edgerton, at which time and place said East Side Canal and Irrigation Company may appear and be heard in the above entitled proceeding.

Be it further ordered that if said East Side Canal and Irrigation Company does not appear at said time and place, said Company shall be guilty of contempt of this Commission and subject to the penalties prescribed by said Public Utilities Act.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1912.

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DECISION NO. 261.

IN THE MATTER OF THE APPLICATION OF STOCKTON TERMINAL AND EASTERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF BONDS.

Application No. 51.

Decided October 7, 1912.

Held, That the Commission's authority to sell bonds is not a permission to pledge the bonds.

C. L. Neumiller, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

OPINION ON SUPPLEMENTAL APPLICATION.

On May 30, 1912, this Commission made its order in the proceeding entitled as above, authorizing applicant to issue its six (6) per cent gold bonds of the face value of $65,000, the proceeds to be used only for the purposes specified in the order. The order specified that applicant might sell said bonds so as to net applicant not less than eighty (80) per cent of the par value of the principal thereof besides interest accrued thereon, and provided that the bonds should issue on the conditions specified in the order and not otherwise.

When applicant filed its first monthly report under said order, it appeared that bonds of the face value of fifty-four thousand ($54,000) dollars had been pledged by applicant to secure five promissory notes totaling twenty-seven thousand ($27,000) dollars. This Commission's order gave authority to sell, but not to pledge. The Commission, on ascertaining the facts, immediately notified applicant that it had violated this Commission's order and directed it to file a supplemental petition setting up the facts fully and asking for a modification of this Commission's order, so as to authorize a pledge of the bonds, if that were desired. Applicant filed such petition, asking permission to pledge the entire authorized issue, and a hearing was held thereon.

At the hearing, three of applicant's directors testified that the violation of the order had been unintentional; that they supposed that an authority to sell bonds included an authority to pledge them; that applicant's creditors had been pressing for payment and that it became necessary to secure funds to meet these claims and to extend the line of railway several miles; that it was impossible at that time to sell applicant's bonds at a reasonable figure, and that they had consequently authorized the applicant to borrow the money from five local banks, giving the bonds as collateral and themselves going on the notes. These notes were

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as set forth in the order which follows this opinion. The money derived from these notes, being $27,000, all went into applicant's treasury and was spent for purposes authorized in this Commission's said order dated May 30, 1912.

Applicant asks that said order be so modified as to validate the pledge of its bonds, as aforesaid, and to give to it in the future the alternative of selling or pledging said bonds. Mr. J. E. Adams, representing the United Investment Company, which owns some 99 per cent of applicant's capital stock, appeared at the hearing and requested that certain conditions be inserted in the order on this supplemental application. These conditions will be inserted except as to those matters which are properly the subject of agreement between applicant and the banks and persons from whom applicant may borrow money to be secured by its bonds.

I am convinced that none of applicant's directors intended to violate this Commission's order. They adopted the expedient which seemed to them nearest at hand to secure the necessary funds, without reading carefully this Commission's order. While there has been a violation of this Commission's order, it has not been such a violation as to call for further steps than those which the Commission promptly took. I am satisfied that it would be advisable to modify the Commission's original order so as to give to applicant the alternative right to pledge the bonds therein authorized, with the right to sell the bonds which may be outstanding as collateral, on the terms and conditions hereinafter in the order specified. Even with these bonds outstanding as collateral, there will be a wide margin between the face value of the bonds and the value of applicant's property.

I submit the following form of order:

ORDER.

This Commission having heretofore on the 30th day of May, 1912, made its order authorizing Stockton Terminal and Eastern Railroad Company to issue its six (6) per cent gold bonds of the face value of $65,000, to be sold so as to net the said company not less than eighty (80) per cent of the par value of the principal thereof besides interest accrued thereon, and said company having thereafter issued a portion of said bonds to the face value of $54,000 as collateral to secure the payment of five certain notes amounting to $27,000 in violation of the terms of said order, and said company having thereafter filed its petition praying for a modification of this Commission's said order so as to permit said company to pledge said bonds as an alternative to selling them, and a public hearing having been held on said application and it appearing to this Commission that said violation of its said order was unintentional and that the relief hereinafter given should be granted,

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It is hereby ordered as follows:

1. This Commission's said order dated May 30, 1912, in the proceeding entitled as above, is hereby amended so as to provide that applicant may either sell said bonds as therein provided or as an alternative may pledge such of them as may not have been sold at not to exceed two dollars face value of bonds for one dollar face value of indebtedness. The authority to sell applies also to such of said bonds as may be in the hands of a pledgee.

2. Bonds of said authorized issue used as collateral on one obligation may thereafter during a period of one year from the date of this order be used as collateral on other obligations on the terms herein specified, subject to the proviso in the next section. In other respects this Commission's consent must, of course, be secured before applicant enters into the obligations referred to in section 52 of the Public Utilities Act.

3. All moneys derived from obligations on which bonds of said authorized issue are used as collateral shall be used only for the purposes and not to exceed the amounts specified in the Commission's order dated May 30, 1912.

4. The issue by applicant of its bonds as collateral on the following promissory notes is hereby authorized and confirmed:

(*a*) Note of Stockton Terminal and Eastern Railroad Company to Andrew McCormick and F. J. Dietrich, dated July 25, 1912, amount $5,500, endorsed by the payees and held by Farmers and Merchants' Bank of Stockton.

(*b*) Note of Stockton Terminal and Eastern Railroad Company to Andrew McCormick and Edward F. Davis, dated July 25, 1912, amount $5,500, endorsed by the payees and held by Commercial and Savings Bank of Stockton.

(*c*) Note of Stockton Terminal and Eastern Railroad Company to The First National Bank of Stockton, dated July 25, 1912, amount $5,000, endorsed by Andrew McCormick, F. J. Dietrich and E. F. Davis.

(*d*) Note of Stockton Terminal and Eastern Railroad Company to The Stockton Savings and Loan Society, dated July 25, 1912, amount $5,500, and endorsed by Andrew McCormick, F. J. Dietrich and E. F. Davis.

(*e*) Note of F. J. Dietrich, E. F. Davis and Andrew McCormick to Stockton Savings Bank, dated June 8, 1912, amount $5,500, and now held by Stockton Savings Bank.

5. In all other respects this Commission's said order dated May 30, 1912, is hereby affirmed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of October, 1912.

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DECISION NO. 262.

IN THE MATTER OF THE PROVISION OF SECTION 21, ARTICLE XII, OF THE CONSTITUTION OF CALIFORNIA, RELATING TO LONG AND SHORT HAULS AND THROUGH RATES EXCEEDING THE AGGREGATE OF INTERMEDIATE RATES.

RELATING TO TRANSCONTINENTAL SCRIP BUREAU.

Case No. 214.

Decided October 7, 1912.

Complainants, upon notice from the Commission, presented for approval new freight rate schedules correcting deviations from the provisions of section 21, article XII of the State Constitution, relating to long and short hauls and through rates exceeding the aggregate of intermediate rates, this action being taken on request of Transcontinental Scrip Bureau. The Commission found that in all cases the decreases greatly exceeded in number and importance the increases, and that the increases were justifiable and authorized the Scrip Bureau to publish the proposed tariff.

C. B. Olds and *C. B. Sealy*, for Southern Pacific Company.
F. W. Hodges, for the Western Pacific Railway Company.
M. O. Bicknell, Agent Transcontinental Scrip Bureau, for Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In response to notice from the Railroad Commission, dated October 26, 1911, directing the railroad and other transportation companies of the State, or their agents, to present to the Commission new schedules removing the deviations from the provisions of section 21 of article XII of the Constitution of California, relating to long and short hauls and through rates exceeding the aggregate of intermediate rates, or if it was desired to justify the same, or any of them, an application or applications were received from the Transcontinental Scrip Bureau requesting permission to remove deviations from the provisions of section 21 of article XII of the Constitution in the use of scrip books for passenger traffic by the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway System—Coast lines—and the Western Pacific Railway Company.

The case was set for hearing before Commissioners Loveland and Gordon on June 12th, but was adjourned until August 21st, and set before Commissioner Loveland.

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At the adjourned hearing, it developed that such changes as carriers desired to make in the use of scrip to comply with the constitutional regulation as to long and short hauls and the through rate exceeding the aggregate of intermediate rates would involve a large number of changes, a great majority of which would be declines, some of them very substantial and also a number of advances.

In order to consider the matter more intelligently, the Scrip Bureau and the carriers interested were instructed to prepare and present to the Commission a tentative tariff showing the changes proposed and to again appear before the Commission to justify such changes. Such tentative tariff was prepared and carefully checked over by the Rate Department of the Commission, after which a further hearing was had, to wit, on September 19th.

It was found that the Southern Pacific Company desired to make charges which would result in 542 increases, a large majority of which were 5 cents or under, and 9,061 changes which would result in decreases. Differing conditions were set forth as a basis for these changes in addition to the necessity for complying with the constitutional regulations, for instance: In the application of the Southern Pacific Company, it was shown that on account of the reduction of mileage, net fares between San Francisco and points on the Benicia route are reduced from 2 to 10 cents affecting nearly all points between Oakland Pier and Ogden, Utah, and also north of Davis and Roseville to stations in Oregon.

Also applications of the short line fare between Davis and Tehama will result in reduction of about 65 cents per scrip ticket. This reduction is very far reaching, as it includes all scrip tickets reading through Davis and Tehama either via Willows or Roseville, from Davis and points west thereof on the one hand and Tehama and points north thereof on the other hand. This also includes stations in Oregon as well as stations in California north of Tehama.

Also net fares from Bakersfield and points north thereof on the one hand and points east of Colton (to and including El Paso, Texas), on the other hand will be reduced approximately $1.50 per ticket. This reduction is brought about by the application of the Los Angeles fare to the Colton-Riverside-San Bernardino District. This also affects points on the Coast Division to a considerable distance south of San Jose.

Fares from San Francisco, Oakland and Berkeley to Los Angeles, San Bernardino, Riverside, Santa Ana, and intermediate points including main and branch line points will be reduced 2 cents.

While there are a few cases where the increases amount to more than from 1 cent to 5 cents, a careful checking of the tentative tariff shows

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that these increases are between points where there is very little, if any, travel on scrip.

Most of the increases which amount to more than 5 cents, and, in fact, most of all of the increases, result from the following fact: When the Atchison, Topeka and Santa Fe Railway System absorbed the San Joaquin Valley Railroad, it based its use of scrip upon a mileage basis of 2½ cents per mile. The Southern Pacific Company being a longer road, met that road's rates and now requests permission to discontinue meeting the Santa Fe rate in the use of scrip and to base its use of scrip on the actual mileage basis. This results in some increases in rates on the Southern Pacific Company in the use of scrip, where mileage between the points is in excess of the mileage via Santa Fe, but the rates of the Santa Fe for the use of scrip remain as before. The regular cash fares remain the same via the Southern Pacific Company, the only change being as before stated where the mileage is greater via that line than by the Santa Fe, and the only change being in the use of scrip which is sold on a mileage basis. This is the only possible solution of the problem under the conditions. If rates were based on any other than the actual mileage via the route traveled, constant conflict with the provisions of the Constitution would occur.

In checking up the tariff it was found also that in some few instances errors in calculation had formerly been made which accounted for some of the increases as well as some of the decreases. In the past, if a rate figured at say $1.97, it was put in the tariff at $1.95, or if it figured at $2.08 it was made $2.10, but now having in mind the necessity of complying with the Constitutional Regulation, the exact figures are used.

In the case of the Santa Fe, there are changes in the tariff which result in 249 increases of 5 cents and under, or an average of about 3 cents, and 23 increases of over 5 cents as follows:

16 increases of 7 cents.
5 increases of 8 cents.
2 increases of 10 cents.

There are 626 decreases far more reaching in their effect and importance than are the increases. It has been found on examination that the majority of the increases in scrip fares on the Santa Fe were between points where there was little or no business transacted on scrip tickets, and if the proposed rates were not permitted to become effective a reduction in scrip fares between a few of the more important points would automatically become effective under the operation of the Constitutional provisions referred to.

The question of the reasonableness of the rates for scrip tickets between the larger points is not before the Commission, and we therefore will not force the carriers to keep in effect rates between small stations

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where scrip is seldom used, thereby reducing the carriers' rates between the more important points without a hearing or without an opportunity to defend them.

The changes as to the Western Pacific, suggested in the tentative tariff, are trivial and unimportant, the great majority of the increases being from 1 cent to 2 cents and confined almost exclusively to points where scrip tickets will never be sold. These changes, as proposed by the Western Pacific, are confined wholly to a desire by that company to have its rates on a uniform mileage basis, and represent 445 increases and 1,525 decreases. In no instance does the tariff proposed by the Western Pacific show a fare outside of the suburban territory which yields over 2½ cents a mile, and in many instances by reason of longer mileage much less than that is shown. Many of the small increases in the case of the Western Pacific are brought about by using the actual figures instead of adding a cent or two or deducting a cent or two to make the rates conform to our coinage of nickels and dimes.

From a careful review of the evidence in this case and a minute examination of the tariffs, I am of the opinion that the tariff as submitted by the Transcontinental Bureau should be approved with the understanding that in approving it the Commission does not at this time pass upon the reasonableness of these rates but only approves the removal of inconsistencies brought about by a strict application of the provisions of the Constitution, and I recommend the following order:

ORDER.

Whereas the Transcontinental Scrip Bureau has filed a request with this Commission for the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway System Coast Lines, the Western Pacific Company and the Transcontinental Scrip Bureau to change the use of scrip to conform to the provisions of the Constitution of California relating to long and short hauls and through rates exceeding the aggregate of intermediate rates; and

Whereas a hearing has been had and the matter carefully gone over by the checking of a tentative tariff which complainants were required to submit to the Commission, and it having been found that in all cases the decreases greatly exceeded in number and importance the increases, and that the reason for such increases was considered good and sufficient except as to four increases proposed by the Atchison, Topeka and Santa Fe Railway system, request for which was withdrawn and the old fares left effective,

It is therefore ordered that the Transcontinental Scrip Bureau be and it is hereby authorized to publish and file with this Commission a tariff containing the fares for the sale of scrip tickets within the State

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of California, as presented in tentative tariff and as amended by the Atchison, Topeka and Santa Fe Railway system.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of October, 1912.

DECISION NO. 263.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS FAIRFAX AVENUE, IN THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.

Application No. 253.

Decided October 7, 1912.

REPORT OF THE COMMISSION.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having on October 4, 1912, filed with the Commission its application for permission to construct a spur track at grade across Fairfax avenue, in the city and county of San Francisco, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit to construct said track from the board of supervisors of the city and county of San Francisco, and that it is not reasonable nor practicable to avoid a grade crossing with said street, and that said application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted the Atchison, Topeka and Santa Fe Railway Company to construct a spur track at grade across Fairfax avenue in the city and county of San Francisco, California, beginning on the south line of Fairfax avenue 291 feet west of the west line of Quint street, thence in a northwesterly direction over and across Fairfax avenue to a point 16½ feet south of its north line; thence northerly along said street crossing Rankin street, a total distance of about 720 feet, as shown by the map attached to the application and subject to the following conditions, viz:

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(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for the construction of said crossing, and shall ballast same with not less than six (6) inches of loose rock or gravel, and otherwise construct same for the safe and easy passage of vehicles and other road traffic, and in conformance with the ordinance granted by the city and county of San Francisco authorizing the construction of said track.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 7th day of October, 1912.

DECISION No. 264.

IN THE MATTER OF THE APPLICATION OF PENINSULAR RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A STREET RAILROAD AT GRADE ACROSS EMBARCADERO ROAD NEAR THE CITY OF PALO ALTO, SANTA CLARA COUNTY, CALIFORNIA.

Application No. 254.

Decided October 7, 1912.

REPORT OF THE COMMISSION.

ORDER.

Peninsular Railway Company having on October 5, 1912, filed with the Commission its application for permission to construct at grade its street railroad across a public highway, known as Embarcadero road, near the city of Palo Alto, Santa Clara County, California, and it appearing to the Commission that this is not a case in which a hearing is necessary, that applicant has secured the necessary franchise or permit from the board of supervisors of Santa Clara County, California, to construct said crossing at grade, and that it is not reasonable nor practicable to avoid a grade crossing with said public highway, and

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that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that Peninsular Railway Company be hereby granted permission to construct its street railroad at grade on Waverly street and across Embarcadero road, a public highway lying along the south boundary of the city of Palo Alto, Santa Clara County, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary crossing plank or guard-rails for said crossing and shall ballast same with first-class stone or gravel ballast not less than six (6) inches in depth, and otherwise construct and maintain said crossing in a good and substantial manner for the use of the public.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of October, 1912.

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DECISION NO. 265.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF ELECTRICAL TRANSMISSION AND DISTRIBUTION LINES IN THE COUNTIES OF PLUMAS, BUTTE AND SUTTER, ETC.

IN THE MATTER OF THE PETITION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR A REHEARING AS TO THE DISTRICT SURROUNDING THE CITY OF STOCKTON AT A CONSTANT DISTANCE OF TWO (2) MILES FROM THE MUNICIPAL LIMITS THEREOF.

Application No. 64.

Decided October 8, 1912

Interpreting original order entered herein with respect to permissible territory of operation of applicant in vicinity of Stockton.

Goodfellow, Eells & Orrick and *W. H. Orrick,* for Oro Electric Corporation.

Chickering & Gregory and *Allan Chickering,* for Western States Gas and Electric Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

On July 3, 1912, this Commission made its order in the proceeding entitled as above, granting to Oro Electric Corporation a certificate that public convenience and necessity require the construction of its plant and lines for the transmission and delivery of electrical energy in certain Counties of this State including "all of San Joaquin County north of the right of way of the Southern Pacific Company extending from a point east of Bixler, through Stockton and Burnham to the easterly boundary line of the county, except *the city of Stockton,* the rectangular district surrounding Lodi as hereinafter more particularly described and the Island Territory as hereinafter more particularly described."

On July 11, 1912, Western States Gas and Electric Company filed its petition for a rehearing "so far as the same (*i. e.,* this Commission's order) affects the district surrounding the city of Stockton at a constant distance of two (2) miles from the city limits of said city." Petitioner alleged that this Commission's order is uncertain in that it does not appear therefrom whether this Commission intended for the

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present to exclude Oro Electric Corporation from the city of Stockton or from the larger area extending beyond the city of Stockton, having a municipal character, and commonly known as Stockton. At the original hearing, no distinction was made between the city of Stockton and Stockton, used in the larger sense. Oro Electric Corporation asked the right to serve all of San Joaquin County north of said line of railroad except the cities of Stockton and Lodi. The petitioner in the present proceeding made no distinction between the city of Stockton and what it now refers to as Stockton. This Commission's order refers to the "City of Stockton" and is clear and unambiguous in that respect. Nevertheless, it was evident that petitioner had, apparently by inadvertence, neglected to introduce testimony which it now desired to offer affecting a district surrounding the city of Stockton. This Commission desires the fullest light on all cases before it, to the end that justice may in all cases be done. The Commission does not desire to foreclose a party who, through inadvertence, may have failed to present his case. For these reasons the Commission granted a rehearing as to the district described in the petition for rehearing.

At the rehearing, Oro Electric Corporation, hereinafter called the Oro Corporation, pointed out that it laid no claim to the district around the city of Stockton south of the right of way of the Atchison, Topeka and Santa Fe Railway Company (erroneously referred to at the hearing and in the order as the right of way of the Southern Pacific Company), whose line of railroad runs through Stockton in a general easterly and westerly direction. Western States Gas and Electric Company, hereinafter referred to as the Western States Company, limited its claim to a district surrounding the city of Stockton at a constant distance of one instead of two miles from the city limits. The territory in controversy was accordingly limited to a strip one mile wide around the city of Stockton lying north of the right of way of the Atchison, Topeka and Santa Fe Railway Company.

For the purpose of this opinion I shall divide this strip into two portions, called respectively District A and District B. District A will be the territory in which the Western States Company now renders more or less general service. It is a district one mile wide surrounding the city of Stockton and bounded on the northwest by the Lower Sacramento road, on the north by the center line of Harrison street extended westerly and easterly, on the east by the center line of Ash street, thence westerly along the center line of Copperopolis road to the center line of C street, thence northerly along said center line of C street and the extension thereof to meet the northerly line of the district now described, and on the south by the right of way of the Atchison, Topeka and Santa Fe Railway Company. District B will be the remaining

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portion of the one mile strip. While there are some services in District B, it cannot properly be said that the district is being served by the Western States Company.

Under the Public Utilities Act, it is not necessary for a utility to secure the permission of this Commission to enter a territory which is not being served by a utility of like character. Hence it follows as a matter of course that the Oro Corporation may enter District B. See the decisions of this Commission in Case No. 269, *Pacific Gas and Electric Company* vs. *Great Western Power Company*, and Application No. 147, being the application of Mount Konocti Light and Power Company for a certificate of public convenience and necessity. The Western States Company has the same rights in this respect as the Oro Corporation.

With reference to District A, the Western States Company presented evidence to show that its service was satisfactory and its policy as to extensions liberal. The company's manager testified that since he became such manager his company has in no case made a charge for a service connection or an extension. The evidence also showed that this company conducted an energetic free wiring campaign which resulted in a large amount of new business and that it conducts a continuous active solicitation for new business. The Oro Corporation presented some evidence to show that the service of the Western States Company is not satisfactory, but the evidence was not convincing. Several of the Oro Corporation's witnesses frankly admitted that the service of the Western States Company is entirely satisfactory. The Oro Corporation also presented evidence concerning a large number of houses in Districts A and B, which are not at present supplied with electricity. The larger number of these houses are in District B. Apart from some slight evidence as to the Fair Oaks territory, east of the city of Stockton, there was no evidence that people in District A had any difficulty in securing electricity from the Western States Company. I find that on the record in this case the Oro Corporation has not made out a case as to service or extensions as affects District A.

The contract residence lighting rate of the Western States Company in the territory in and around the city of Stockton is 7 cents per kilowatt hour, with a minimum monthly charge of $1.00, and the contract commercial lighting rate is 5 cents per kilowatt hour, with a minimum monthly charge of $15.00. At the hearing the Oro Corporation presented a graduated contract rate as follows: for residence lighting, from 6½ cents per kilowatt hour for less than 100 kilowatt hours per month down to 4.7 cents for more than 500 kilowatt hours per month; for commercial lighting, from 6 cents per kilowatt hour for less than 95 kilowatt hours per month down to 3 cents for more than 3,000 kilo-

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watt hours per month. The Oro Corporation offers in each case a discount of 10 per cent if bills are paid before the tenth day of the ensuing month, with a minimum monthly charge of $1.00. At the hearing, the Oro Corporation made these rates conditioned upon hereafter securing the right to enter the city of Stockton, for which right the corporation intends hereafter to apply to this Commission. The Oro Corporation was unable to say whether it would put the offered rates into effect if it should not secure the right to enter the city of Stockton. On this state of the record, the Commission did not at the hearing make the careful examination into the effect of the Oro Corporation's proposed rates and on the ability of the corporation to furnish electrical energy for the rates specified which it otherwise would have made. After the submission of the case, however, the Commission received from the Oro Corporation a letter stating that entirely irrespective of whether the corporation is permitted to enter the city of Stockton, it will be obliged to extend its lines into the territory involved in the rehearing, to take care of the agricultural load, so that "the rates — both commercial and residential — which were submitted by it will be the rates in force in said territory (provided it is permitted to enter the same), even though it is denied the privilege of doing business in the city of Stockton." "In other words," continues the letter, "said rates are not conditional in any way upon the Company's being permitted to enter Stockton."

If the Oro Corporation had taken this position during the rehearing, this Commission would have made a careful inquiry into the entire question of the Oro Corporation's ability to furnish electricity at these rates and the effect which these rates would have as compared with those of the Western States Company. The latter company would have been entitled to make similar inquiries. On the testimony presented at the hearing the Oro Corporation did not make out a case as to rates as affects District A. I have the less hesitancy in reaching this conclusion for the reason that when the Oro Corporation makes its application as to the city of Stockton it may include District A in its application, and the entire matter of rates may then be considered carefully and thoroughly as to both the city and this district.

I recommend that the petition of the Western States Company be granted as to District A and denied as to District B, and submit the following form of order:

ORDER.

This Commission having heretofore, on the third day of July, 1912, made its order in Application No. 64, granting to Oro Electric Corporation a certificate of public convenience and necessity as to certain counties and specified portions of counties in the State of California,

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including a specified portion of the county of San Joaquin, and Western States Gas and Electric Company having heretofore filed its petition for a rehearing in so far as affects the district surrounding the city of Stockton at a constant distance of two (2) miles from the city limits of said city, and said petition having been granted and said rehearing having been held and the Commission being fully advised in the premises,

It is hereby ordered as follows:

1. Subsection (10) of section (*a*) of the findings of fact contained in this Commission's order in Application No. 64, dated July 3, 1912, is hereby amended so as to read as follows:

> (10) All of San Joaquin County north of the right of way of the Atchison, Topeka and Santa Fe Railway Company extending from a point east of Bixler through Stockton and Burnham to the easterly boundary line of the county except — the city of Stockton; except also a strip of territory at a constant distance of one mile from the city limits of the city of Stockton and bounded on the northwest by the Lower Sacramento road, on the north by the center line of Harrison street extended westerly and easterly, on the east by the center line of Ash street, thence westerly along the center line of Copperopolis road to the center line of C street, thence northerly along said center line of C street to said extension of the center line of Harrison street easterly and on the south by the right of way of the Atchison, Topeka and Santa Fe Railway Company; except also the rectangular district surrounding Lodi as hereinafter more particularly described; and except also the island territory as hereinafter more particularly described.

2. Section (10) of section (1) of the Commission's said order dated July 3, 1912, to be found on page 24 of the original opinion and order, is hereby amended so as to read as follows:

> (10) All of San Joaquin County lying north of the right of way of the Atchison, Topeka and Santa Fe Railway Company extending from a point east of Bixler through Stockton and Burnham to the easterly boundary of the county except—
>
> (*a*) The city of Stockton;
>
> (*b*) A strip of territory at a constant distance of one mile from the city limits of the city of Stockton and bounded on the northwest by the Lower Sacramento road, on the north by the center line of Harrison street extended westerly and easterly, on the east by the center line of Ash street, thence westerly along the center line of Copperopolis road to the center line of C street, thence northerly along said center line of C street to said extension of the center line of Harrison street easterly and on the south by the right of way of the Atchison, Topeka and Santa Fe Railway Company;

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(*c*) The island country, more particularly described as a strip of territory seven miles wide, bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two thirds of the distance on the westerly boundary; and

(*d*) A rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city.

3. In all other respects this Commission's said order dated July 3, 1912, is ratified and affirmed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of October, 1912.

DECISION No. 266.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO NEWSPAPER UNION FOR AUTHORITY TO RECEIVE PASSENGER TRANSPORTATION FROM ANY CARRIERS IN EXCHANGE FOR ADVERTISING SPACE.

Application No. 227.

Decided October 8, 1912.

Held, **The Commission has no power to grant authority for the exchange of advertising space for transportation. The statute itself gives that power in so far as it exists. The restrictions which the Commission may impose may diminish but cannot increase that power.**

Held, **That applicant is not the proprietor or employee of a newspaper as those words are used in the Public Utilities Act.**

O. K. Cushing, for applicant.

REPORT OF THE COMMISSION.

THELEN and GORDON, *Commissioners:*

San Francisco Newspaper Union applies to this Commission for an order permitting petitioner to exchange advertising space with common carriers in the State of California for transportation issued to petitioner, under the provisions of section 17*a*–3 of the Public Utilities

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Act, providing in part "that passenger transportation may issue to the proprietors and employees of newspapers and magazines and the members of their immediate families, in exchange for advertising space in such newspapers or magazines at full rates, subject, however, to such reasonable restrictions as the Commission may impose."

This is really an application to secure the Commission's opinion whether on the state of facts outlined in the application and on the hearing, the San Francisco Newspaper Union may lawfully receive transportation in exchange for advertising space. This Commission has no power to grant authority for the exchange of advertising space for transportation. The statute itself gives that power in so far as it exists. The restrictions which the Commission may impose may diminish but cannot increase that power.

Petitioner is a corporation organized under the laws of New Jersey, and is a subsidiary corporation of the American Type Founders' Company. Petitioner prints and sends to some eighty weekly newspapers of the State certain pages which are to be used as a portion of those newspapers. For instance, in four page newspapers, such as the Middletown *Independent*, petitioner prints pages 1 and 4 and then sends the paper to the Middletown *Independent*, which prints pages 2 and 3. In an eight page paper, such as the *Peninsula News*, petitioner prints pages 2, 3, 6 and 7, and the proprietors of the *Peninsula News* then print pages 1, 4, 5 and 8. The pages printed by petitioner contain general news and also certain space devoted to advertising. The advertisers pay the petitioner for this space and receive an identical service in each of the eighty weekly newspapers heretofore referred to. The petitioner secures a compensation from the newspapers for its printing and paper and also a compensation from the advertisers for the space devoted to them.

Applicant also prints what is known as the "San Francisco Newspaper Union," a four page paper, which it sends to the advertisers whose advertisements have appeared in the pages which have been sent to the eighty weekly newspapers. This paper contains matters of general information and is sent out for the purpose of showing to advertisers the relative location of their advertisement in the weekly newspapers. In the Middletown *Independent* of September 28, 1912, petitioner inserted some eleven advertisements which ran in all the other seventy-nine weekly newspapers during that week. During that week the petitioner printed some two hundred copies of its paper and sent the same to these eleven advertisers and to petitioner's agents in different portions of the country, and other people.

Petitioner frankly admits that the two or four pages which it prints and which are used by the weekly newspapers as a part of their paper,

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do not constitute a newspaper, as that word is used in the Public Utilities Act. These pages are a part of the makings of a newspaper. Petitioner contends, however, that the "San Francisco Newspaper Union," either by itself or in conjunction with the pages which are sent to the weekly newspapers, amounts to a newspaper. It is clear to us that the "San Francisco Newspaper Union" is not a newspaper. It is not sent out for the purpose of disseminating news, nor does it have any general circulation among the public, or any class of the public. It is sent out in lieu of a letter or statement informing the advertiser in what portion of the weekly newspapers his advertisement appears and in which newspapers.

Nor are we convinced that the conjunction of the "San Francisco Newspaper Union" with the printed pages which petitioner sends out to the weekly newspapers make a newspaper any more than either of the elements considered alone.

Prior to the effective date of the Public Utilities Act, petitioner received transportation from certain carriers of the State in return for advertising on the pages which it sent to the weekly newspapers. This advertising was general in its nature and some of these weekly newspapers at the same time published in the pages which they printed, advertisements from the same carriers, dealing generally with more detailed information, such as time tables or other matters affecting particularly the community in which the newspapers circulated. If petitioner is correct, such carriers would be giving transportation to two classes of persons, each claiming to be a "newspaper," in connection with a single paper. The statute authorizes the issue of transportation "to the proprietors and employees of newspapers." There certainly cannot be two sets of proprietors and employees for one and the same newspaper. It seems to us that this line of reasoning shows the fallacy of holding that the petitioner is printing a "newspaper" as that word is used in the Public Utilities Act. Petitioner does print a portion of the makings of a newspaper and a sort of news letter to its advertisers, but we are of the opinion that it is not the proprietor or employee of a newspaper, as those words are used in the Public Utilities Act. We recommend that the petition be denied, and submit herewith the following form of order:

ORDER.

San Francisco Newspaper Union having applied to this Commission for an order permitting it to exchange advertising space with common carriers in the State of California for transportation to be issued to petitioner, and a public hearing having been held on the application, and it appearing to the Commission that San Francisco Newspaper Union is not the proprietor or employee of a newspaper, as said words are used in the Public Utilities Act,

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It is hereby ordered that said application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of October, 1912.

DECISION NO. 267.

IN THE MATTER OF THE APPLICATION OF SAN JOSE TERMINAL RAILWAY COMPANY TO ISSUE BONDS OF THE FACE VALUE OF SIX HUNDRED AND FIFTY THOUSAND DOLLARS.

Application No. 57.

Decided October 9, 1912.

Application of a new railroad corporation for permission to issue bonds and to apply the proceeds thereof to construction and other corporate purposes.

Held, The Commission cannot undertake to say whether applicant's estimates of operating expenses and earnings are correct, but that the Commission will be inclined, in pursuance of its policy to do all in its power to assist in the development of the State by public utilities, properly safeguarded, to resolve such doubts as it may have in favor of the utility and to impose such conditions as it may consider necessary to prevent abuse of its order. Intending purchasers of such utilities' securities must expect to make an independent investigation, and not rely on the Commission's order as guaranteeing success.

H. H. McClosky, for applicant.
D. H. Bryan, for protestant, Mary E. Lockwood.

REPORT OF THE COMMISSION.

THIELEN, *Commissioner.*

This is an application of San Jose Terminal Railway Company for an order of this Commission authorizing the issue of bonds of the face value of $650,000.

Applicant was incorporated under the laws of this State on September 2, 1911. It has power under its articles of incorporation to construct and operate a commercial railroad of standard gauge for the transportation of passengers, express and freight, by steam, electricity or other lawful motive power over a route described as follows:

Beginning at a point on the southerly end of San Francisco Bay

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northerly from the town of Alviso and running thence in a general southerly direction through the town of Alviso, and thence in a general southerly direction to the northerly limits of the city of San Jose, and thence through the city of San Jose along, over and across the streets, alleys, squares and lands thereof, with such extensions and branches as may hereafter be decided upon in accordance with law.

The estimated length of this line of railway is twelve (12) miles. Applicant also has power, among others, to operate in connection with said line of railway, steamers, ferryboats and barges for the transportation of passengers and freight. The original incorporators were M. J. Gardner, John A. Mehling, H. H. McCloskey, Hugh Center, and V. Koch.

Applicant's authorized capital stock is $2,500,000, consisting of 2,500,000 shares of the par value of one dollar ($1.00) each, of which shares 1,000,000 are preferred and 1,500,000 common. The preferred stock may receive out of the surplus earnings of each fiscal year, as and when declared by the board of directors, a non-cumulative dividend at the rate of seven (7) per cent per annum, payable before any dividend is paid on the common stock. The preferred stock also has preference as to assets.

Of the amount of capital stock so authorized, the entire 1,500,000 shares of common stock were issued on or about September 13, 1911, to John A. Mehling, one of the incorporators of the company, in return for Mehling's interest in certain deeds and contracts covering most but not all of the right of way between San Jose and Alviso, and for certain maps, surveys and engineer's reports and other property, fully described in the minutes of the meeting of the board of directors of September 13, 1911. Mehling's deed to the applicant covering these properties is dated May 18, 1912. Most of the deeds from the property owners to Mehling contain a proviso that the grantor may annul the grant unless the railroad is in operation within twenty-four months from the date of the deed and is kept in operation thereafter. Most of the deeds from the property owners to Mehling are dated March or April, 1912. Much of this land was donated and some of it was paid for by applicant itself in preferred stock. Most of the right of way so secured is thirty feet wide and the total length thereof outside of San Jose and Alviso is ten and three quarters miles. The total cost to Mehling of the property which he deeded to the applicant in return for all its common capital stock was not in excess of a few thousand dollars. Applicant contends, however, that this property is now valuable, particularly because of the possibility of industrial development on and adjoining its terminal properties in the vicinity of Alviso.

Of applicant's preferred stock, 32,800 shares are alleged in the peti-

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tion to have been issued. It appeared at the hearing, however, that of this amount 20,000 shares were not actually delivered prior to March 23, 1912. H. H. McCloskey gave his note for 20,000 shares of preferred stock, and the shares were to be issued as payments were made on the note, but there was no actual delivery prior to March 23, 1912. Of the remaining 12,800 shares 2,500 were issued in exchange for stock in a company known as the Home Union, doing business in San Jose, 2,705 shares were issued for nine parcels of right of way which were paid for by applicant and not by Mehling, and the remaining shares were sold for cash at par.

Applicant has authorized a total bonded indebtedness of one million ($1,000,000) dollars, to be evidenced by one thousand five (5) per cent twenty (20) year gold bonds having a face value of one thousand ($1,000) dollars each. This possible indebtedness is secured by mortgage or deed of trust to Garden City Bank and Trust Company of San Jose, dated March 16, 1912, and covering all of applicant's property. The trust deed provides for a sinking fund of $25,000 for each of the years 1922 to 1925, inclusive, of $50,000 for each of the years 1926 to 1930, inclusive, and of $100,000 for the years 1931 and 1932. Of the bonds so authorized, bonds of the face value of $50,000 are to be delivered by the trustee to the railway company on the execution of the trust deed, to pay off existing debts, and the remaining $950,000 may be certified and delivered only after the railway company has filed with the trustee a certificate that all preceding bonds have been used for the purposes authorized in the trust deed. Of these bonds so authorized, the petition alleges that fifty (50), having a face value of fifty thousand ($50,000) dollars were issued prior to March 23, 1912. The evidence, however, shows that only seventeen (17) bonds were delivered prior to said date. Of these seventeen (17) bonds, two (2) were issued for attorney's fees and fifteen (15) were issued in exchange for a forty-acre farm in Santa Clara County in no way connected with the railroad. The farm was sold within a few days for twelve thousand ($12,000) dollars and the proceeds were thereupon turned into applicant's treasury. It goes without saying that this Commission would not authorize such a transaction if it had taken place subsequent to March 23, 1912. Twenty (20) bonds were issued in June, 1912, to secure a note for $10,204.39 given by applicant to Mahoney Brothers in payment for the grading of applicant's line of railway between San Jose and Alviso. These bonds and thirteen (13) more which were never issued were regarded by applicant as covered by note of John A. Mehling for thirty-three thousand ($33,000) dollars. On closely examining applicant's witnesses, however, it appeared that these thirty-three bonds were not delivered to Mehling prior to March

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23, 1912, as, indeed, they should not have been. The twenty bonds issued as collateral were issued without authority of this Commission and are void unless their issue is sanctioned by this Commission. At the hearing, applicant's attorney asked for such sanction, on the ground that there had been no intention to violate the law. I am convinced that this is the case and recommend that this Commission approve the issue of these twenty bonds. When the debt to Mahoney Brothers is paid, and the bonds are returned to the treasury, they can not again be issued without an order of this Commission. They may be included, thereafter, in the total amount of bonds hereby authorized and reissued as part of the bonds so authorized.

It follows that applicant now has issued and outstanding its entire common stock, amounting to $1,500,000, preferred stock in the amount of $12,800 and bonds in the amount of $37,000 of which $20,000 are being used as collateral.

Applicant plans to build a standard gauge electric road between San Jose and Alviso and to run ferryboats and freight barges via Alviso Slough and San Francisco Bay between Alviso and the Ferry Building at or near the foot of Market street in San Francisco. Applicant does not expect to build terminals in San Francisco, but to use the State's property along East street or the Embarcadero in the same way in which river boats now plying between San Francisco and Sacramento or Stockton or other river points use the same property. Ultimately, applicant expects to build north of Alviso to deep water in San Francisco Bay and thus to avoid the delay which will be caused by navigating Alviso Slough.

On June 10, 1912, applicant secured from the city of San Jose a franchise for fifty (50) years over and along the streets therein specified. This franchise provides that the actual construction of the railroad shall begin within one year and that the railroad shall be finally completed within eighteen months. Applicant avers that it also has a franchise from the city of Alviso. The grading on applicant's line of railway between San Jose and Alviso has been completed with the exception of a few hundred feet near Alviso, where the ground was too wet. Applicant has a contract with Mahoney Brothers for the completion of its line of railway. No ferryboats or barges have been secured.

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Applicant now asks for an order of this Commission authorizing the issue of bonds of the face value of $650,000, as follows:

For the purchase of real property	$ 59,840 00
For the construction of the railway line	142,842 16
For the purchase of personal property	214,000 00
For engineering and interest during construction	70,817 84
	$487,500 00
For discount on bonds (25%)	162,500.00
	$650,000 00

The item for the acquisition of real property covers passenger and freight terminal buildings and repair shops at San Jose and Alviso, shop tools and equipment, dredging in Alviso Slough, wharf and steamer landing at Alviso, and terminal property in San Jose. The item for the construction of the railway line includes everything from the grading to and including the electric power transmission and includes the sum of $10,204.39 due to Mahoney Brothers. The item for the purchase of personal property includes four electric motor cars, one electric locomotive, eight five-ton gasolene motor trucks, two combination baggage and passenger cars, eight passenger cars, six flat cars, eight ten-ton freight trucks for gas motor, one tugboat, three freight barges, and rebuilding and refurnishing two passenger steamers which are to be leased with an option to purchase. The application shows the foregoing items in detail and the estimated necessary expenditure in connection with each thereof. The item for engineering and interest during construction is much too high. Applicant figured on an entire year's interest on the entire amount of bonds asked for, which would be $32,500, while the road could easily be built in six months and the interest should be computed for that time on only half the amount of money involved. On the other hand, applicant did not provide for legal expenses and contingencies. In view of all the facts, I shall not cut down this item. For every dollar received from the sale of the bonds, applicant must account to this Commission, and this Commission will not approve any improper or excessive expenditure. It thus appears that applicant desires to raise $487,500 to build and equip its railroad and boat line. Applicant has entered into no contract for the sale of its bonds, but estimated on the basis of securing 75 for them. This Commission has not hitherto authorized the issue of bonds so as to net less than 80 and accrued interest, and I am not prepared to recommend a departure from that policy in this case. If applicant's bonds can not bring 80 under the safeguards hereinafter prescribed, the project does not have a reasonable prospect of success.

At the hearing, the Commission expressed a desire to hear further evidence on the question whether there was a reasonable prospect of

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applicant's being able to pay interest on its bonds. The estimates in this regard presented at the original hearing, particularly with reference to the expected traffic, were in my judgment very far in excess of what could reasonably be expected. Applicant will compete for both passenger and freight traffic with the Southern Pacific Company, which runs a large number of trains daily between San Jose and San Francisco. The Southern Pacific Company's passenger trains make the run in between one hour and a quarter and one hour and a half, while applicant would take between two hours and a half and three hours. In this connection should also be considered the possible electric railroad development on the peninsula. In the freight business, the Southern Pacific Company will have the advantage of extensive terminals at both termini and of spur tracks leading to the principal industries. The carload rates of this company between San Francisco and San Jose are in no case in excess of one dollar per ton.

At an adjourned hearing, applicant presented revised estimates of possible earnings. Applicant's witnesses testified that because of the proposed reduction of the fare by applicant from the present one-way rate of $1.25 to $.75, and also because of the attractiveness of the water trip, a considerable portion of the passenger traffic between San Jose and San Francisco would move over applicant's line. With reference to freight, applicant proposes to pick it up from one business house to another by means of gasolene motor trucks. These trucks will run on to applicant's freight barges without unloading and will then deliver at the door of the consignee at either terminus of the line. Applicant's witnesses testified that by means of this expedited freight service, applicant could at rates of $5.00 or $6.00 per ton cut heavily into the express business and also into the less than carload freight business. These witnesses presented estimates of operating expenses and earnings as justifying their conclusion that applicant will be able to meet its obligations on the proposed bond issue. The correctness of these estimates depends entirely on whether applicant will be able to secure the amount of traffic on which its witnesses rely. This Commission can not undertake to say whether these estimates are correct. On the other hand, this Commission will be inclined, in pursuance of its policy to do all in its power to assist in the development of the State by public utilities, properly safeguarded, to resolve such doubts as it may have in favor of the utility, and to impose such conditions as it may consider necessary to prevent abuse of its order. Intending purchasers of such utility's securities must expect to make an independent investigation and not rely on this Commission's order as guaranteeing success. I am moved by these considerations to recommend the grant of applicant's petition, subject, however, to the conditions hereinafter specified.

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Applicant alleges that it needs $487,500 to put into its property. To secure this money it asks authority to issue bonds having a face value of $650,000, being considerably in excess of the amount of money which is to go into the property. The cases in which this Commission will authorize an issue of bonds whose face value exceeds the amount of money which will go into the property will be rare. Applicant claims that there is a margin of security in its right of way. At a liberal figure, I do not believe that this asset has a value in excess of fifty thousand dollars. I am of the opinion, after a careful consideration of all the facts, including the fact that this is a new enterprise where success is uncertain, that the Commission can not safely authorize an issue of bonds having a face value in excess of $400,000 on this proposed expenditure of $487,500 and the existing property. If applicant nets on these bonds the minimum price of 80, it will secure therefrom $320,000, leaving a balance of $167,500 to be raised in some other way. The Commission will leave to applicant the preparation of a plan to secure these additional funds. In my judgment, at least half of these funds should have passed into applicant's treasury in cash before any bonds are permitted to issue. This will give a reasonable assurance that the enterprise will go ahead, that a proper margin between the value of the property and the face value of outstanding bonds will be preserved and that the enterprise will not be dropped after a portion only of the bonds have been sold and their proceeds invested. I recommend that before applicant be permitted to issue any bonds it shall have secured and placed in its treasury by methods satisfactory to this Commission the sum of $85,000 of new money, which money shall go into the property for the purposes for which bonds are herein authorized. Applicant may proceed with its construction work and pay out such moneys, from time to time for the purposes hereinafter specified, reporting the expenditures to this Commission monthly in accordance with General Order No. 24, in so far as applicable, but no bonds shall issue until the full amount of $85,000 shall have been so paid into applicant's treasury. I understand that applicant intends to form a syndicate of ten or a dozen men, largely owners of the water front properties north of Alviso, who will take over the bonds and finance the enterprise.

At the hearing, Mrs. Mary E. Lockwood appeared by her attorney in fact, Mr. D. H. Bryant, to protest against the grant of this application unless applicant be ordered to pay her claim of $4,000. Hugh Center took the same stand with reference to a claim of $10,000. These claims grow out of an arrangement which was entered into in or about 1903 between F. M. Lockwood, protestant's husband, and John A. Mehling, one of the promoters of the present enterprise. Lockwood

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and Mehling at that time tried to promote a railroad between San Jose and Alviso, with water connections with San Francisco, in accordance with a plan very similar to that which applicant is now pursuing. Lockwood furnished the money, Mehling did the work, and they were partners. On November 5, 1904, Lockwood transferred his half interest to his wife, Mrs. Mary E. Lockwood, the present protestant. On May 8, 1905, Mrs. Lockwood conveyed all her interest to Hugh Center for $8,000, of which $4,000 was paid in notes on the execution of the agreement. Mrs. Lockwood obligated herself not to claim the remaining $4,000 "until the said Hugh Center, or his assigns or heirs, have financed the said Berryessa and Alviso roads." Center agreed that he would pay said further sum of $4,000 at any time he might elect within two years "from the time the said roads are financed." Later, on August 4, 1911, Center delivered to the Bank of San Jose in escrow a deed, conveying to M. J. Gardner, who is applicant's secretary, all Center's interest in the Lockwood and Mehling franchises, rights of way, options for rights of way, maps, etc., accompanied by written instructions to deliver the deed to Gardner at any time within a year from date upon the payment to Center of $10,000 in cash and the assumption by Gardner of Center's indebtedness to Mrs. Lockwood, or the payment to her of $4,000 in cash. Gardner has not paid the money and the escrow deed has never been delivered. Protestants claim that they are entitled to have applicant pay to them the amounts specified, on the ground that John A. Mehling purported to convey to applicant not merely his one half of the rights involved but also the half formerly owned by Lockwood and now owned by Center. Applicant contends that Mehling conveyed only his own half interest and relies on the minutes in support of its contention: also that all the Lockwood and Mehling rights growing out of the transactions in and about 1903 have long since lapsed and are of no value now: also that no novation ever took place and that Mrs. Lockwood's claim is still against Center alone. The solution of these conflicting claims depends upon a proper interpretation of the documents referred to and of the acts of the parties connected therewith. This is a matter for the courts and not for this Commission. If protestants have any valid claim against applicant, they can readily assert it in the proper forum, which is not this Commission. I accordingly recommend that these protests be disregarded.

I submit the following form of order:

ORDER.

San Jose Terminal Railway Company, having filed with the Railroad Commission of the State of California its application for an order authorizing the issue by said company of its first mortgage gold bonds

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of the face value of $650,000 and also to validate the issue of its first mortgage gold bonds of the face value of $20,000 heretofore issued as collateral security subsequent to March 23, 1912, without the prior authorization of this Commission, all of said bonds to be payable on the 16th day of March, 1932, unless sooner redeemed, and to bear interest at the rate of five (5) per cent per annum, payable semiannually on the 16th day of March and the 16th day of August, and secured by a trust deed or mortgage upon all the property of the company, and a hearing having been duly held, and it appearing to the Commission that the issue of said bonds is reasonably required by said company for the acquisition of property and the construction, completion, extension and improvement of its facilities and for the discharge of its obligations, all as hereinafter specified, and that the same are not properly chargeable to operating expenses or to income.

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by San Jose Terminal Railway Company of four hundred thousand ($400,000) dollars, face value, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of bonds of said company, maturing the 16th day of March, 1932, unless sooner redeemed, to bear interest at five (5) per cent per annum, payable semiannually, under and in pursuance of the terms of the deed of trust or mortgage, heretofore and on the 16th day of March, 1912, made and executed by said San Jose Terminal Railway Company to Garden City Bank and Trust Company, as trustee, upon the conditions following and not otherwise:

1. Bonds of this authorization of the face value of $20,000 may be issued by applicant as collateral security for a debt of $10,204.39 heretofore incurred, to Mahoney Brothers for the grading of applicant's line of railway. When said debt has been paid, said bonds shall be returned to applicant's treasury and they may thereafter be sold as part of, but not in addition to, the issue of $400,000 face value of bonds hereby authorized.

2. San Jose Terminal Railway Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent of the par value of the principal thereof besides interest accrued thereon.

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3. The proceeds from the sale of said bonds shall be applied to the following purposes only:

(*a*)	For the discharge of applicant's obligation to Mahoney Brothers for grading	$10,204 39
(*b*)	For the acquisition of property and the construction, completion, extension and improvement of facilities, for the items specified in applicant's petition, to which reference is hereby made for particulars, amounts not to exceed in the aggregate the following amounts for the following purposes, respectively:	
(1)	The purchase of real property	59,840 00
(2)	The construction of the railway line	132,637 77
(3)	The purchase of personal property	214,000 00
(4)	Engineering, law expenses, interest during construction and all other contingencies	70,817 84

4. Before San Jose Terminal Railway Company may issue any of said bonds, except the $20,000 for collateral, it shall first have filed with this Commission, under oath, and in form and substance satisfactory to this Commission, a statement showing that it has received into its treasury from sources satisfactory to this Commission the sum of $85,000 in new money. Such portions of said sum of $85,000 as may be paid into the railway company's treasury from time to time may be spent for any of the purposes for which bonds are hereby authorized, and the amount so spent shall be reported to this Commission monthly under the Commission's General Order No. 24, in so far as applicable, but no bond shall issue until said entire amount of $85,000 shall have been paid into the railway company's treasury and until said statement shall have been filed with and approved by this Commission.

5. San Jose Terminal Railway Company shall keep true and accurate accounts showing the receipt and application in detail of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of every month the company shall make a verified report to the Commission stating the sale of such bonds during the preceding month, the terms and conditions of such sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

6. The authority hereby given to issue such bonds shall apply only to bonds issued by applicant on or before the thirtieth day of September, 1913.

7. The effectiveness of this order is conditioned upon the prior payment to this Commission of the fee specified in section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of October, 1912.

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DECISION No. 268.

IN THE MATTER OF THE APPLICATION OF PACIFIC LIGHT AND POWER CORPORATION FOR PERMISSION TO PURCHASE THE TANGIBLE PROPERTIES OF GLENDALE LIGHT AND POWER COMPANY AND OF GLENDALE LIGHT AND POWER COMPANY TO SELL SAID PROPERTY TO PACIFIC LIGHT AND POWER CORPORATION.

Application No. 183.

Decided October 9, 1912.

Application by one corporation to acquire all the tangible property of another corporation engaged in furnishing the same utility granted, subject to the proviso that should the city in which the service is furnished, desire to buy said property, the purchaser shall sell same to the city for a stated amount plus such sums as the corporation might hereafter expend plus ten per cent.

S. M. Haskins, for Pacific Light and Power Corporation.
L. C. Brand, for Glendale Light and Power Company.
Frederick Baker, for City of Tropico.
E. S. Ayres, for certain citizens of Tropico.

REPORT OF THE COMMISSION.

THELEN, *Commissioner:*

OPINION.

This is an application by Pacific Light and Power Corporation to purchase for the sum of five thousand two hundred ($5,200) dollars all the tangible property of Glendale Light and Power Company and by Glendale Light and Power Company to sell said property to said corporation for said sum.

Pacific Light and Power Corporation is now supplying electrical energy for light and power to a portion of the city of Los Angeles and of the surrounding territory. Glendale Light and Power Company originally supplied both Glendale and Tropico with electrical energy for light and power, but later sold its distributing system within Glendale to the city of Glendale. The sale of its Glendale property left on its hands the distributing system in Tropico, which the company now desires to sell to Pacific Light and Power Corporation. The Glendale Light and Power Company is owned by Mr. L. C. Brand, who originally organized the company in 1905 in connection with the sale of land in Glendale. Mr. Brand desires to withdraw from the business and hence wishes to sell to Pacific Light and Power Corporation, which has been supplying the current for his distributing system.

The property to be sold consists of the entire distributing system of

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Glendale Light and Power Company, located in Tropico. Mr. Brand and the engineer of Pacific Light and Power Corporation both estimate that the property is now worth about $5,200 and the Commission closely examined the engineer with reference to the different items comprising this total. The order should contain the usual provision to the effect that this amount should not henceforth be taken as against this Commission to represent the present value of the property. Pacific Light and Power Corporation, if permitted to purchase the property, offers immediately to reduce the price of electric energy within Tropico from fifteen cents to eight cents per kilowatt and to reduce the minimum charge from $1.50 to $1.00 per month. The corporation also offers henceforth to make all service connections free of charge, though the Glendale Company has heretofore charged twenty ($20) dollars for each connection.

The city of Tropico was represented at the hearing by its mayor and city attorney, who presented a resolution of the city council of Tropico, requesting this Commission to grant the application. The city has entered into an agreement with Pacific Light and Power Corporation, dated August 15, 1912, and effective for five years after November 1, 1912, by which the latter corporation agrees for a stated consideration to install and maintain a tungsten series street lighting system for the municipality. The streets of the city are at present not lighted. Pacific Light and Power Corporation alleges that it made the rate specified in said agreement in the expectation of being able to furnish electricity for commercial and domestic purposes also in Tropico.

Mr. E. S. Ayres appeared for certain citizens of Tropico to protest against the grant of the application for the reason that these citizens desire to have the city buy the property and then secure electrical energy from the city of Los Angeles, which will soon be in a position, in connection with its Owens River aqueduct, to supply electrical energy. An election to vote bonds to buy the property was held in Tropico shortly before the hearing on this application and the proposition was defeated by a slight margin. Mr. Ayres and his associates now desire to call another election and they fear that it will be difficult for the city to acquire the property if the application is granted in its present form.

After all parties had presented their evidence, they all agreed to this Commission's tentative suggestion that the application be granted subject to the proviso that should the citizens of Tropico desire to buy the plant, the Pacific Light and Power Corporation would sell the same to the city for $5,200 plus such sums as the corporation might hereafter expend, until such purchase, for labor and materials in connection with its system in Tropico, with 10 per cent added thereto, and subject to some further details in connection with this general plan. This general

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agreement has now been confirmed in writing by all parties, with some variations as to details. I believe that this agreement is a fair and just solution of the problem for all concerned and recommend the grant of the application subject to this agreement and the further conditions specified in the order.

I submit the following form of order:

ORDER.

Pacific Light and Power Corporation having filed with this Commission its application for an order authorizing the purchase by it for the sum of $5,200 of the tangible property of Glendale Light and Power Company, and Glendale Light and Power Company having asked for an order permitting it to sell said property for said sum to said Pacific Light and Power Corporation, and a public hearing having been held on said application, and the city council of Tropico being represented at said hearing and requesting that the application be granted, and certain citizens of Tropico being represented and requesting that the application be denied except on certain conditions, and due consideration having been given to all the evidence in this proceeding.

It is hereby ordered that Pacific Light and Power Corporation be and the same is hereby authorized to purchase the entire tangible property of Glendale Light and Power Company and Glendale Light and Power Company is hereby authorized to sell said property to said Pacific Light and Power Corporation on the following conditions and not otherwise, to wit:

(1) The price to be paid for said property shall not exceed the sum of $5,200.

(2) Said sum of $5,200 shall not hereafter be used before this Commission or any other public authority, except as hereinafter specified, as representing for rate fixing or any other purpose the present value of said property.

(3) At any time within five years from and after November 1, 1912, Pacific Light and Power Corporation shall, on demand of the city of Tropico, expressed by resolution of its city council, sell to said city the property which it is now to acquire from Glendale Light and Power Company together with such improvements and additions as it may in the mean time have made thereto in the city of Tropico including its proposed street lighting system in said city, for the sum which said Pacific Light and Power Corporation shall pay to said Glendale Light and Power Company for its property, not exceeding the sum of $5,200, and adding thereto one hundred and ten (110) per cent of such amounts of money as said Pacific Light and Power Corporation may hereafter expend for labor and materials on said improvements and additions, including said street lighting system. Pacific Light and Power Corpo-

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ration shall file with the city clerk of Tropico monthly statements showing the amounts of moneys so expended for said improvements and additions. In case of disagreement as to the amount of money properly payable under this paragraph by the city of Tropico for said property, in case the city desires to purchase the same, the sum shall be fixed by arbitrators, of whom one shall be appointed by the city of Tropico and one by the Pacific Light and Power Corporation and the third by the two so selected; or, if the parties so desire, they may agree on some other method of ascertaining the price so to be paid. The provisions of this paragraph shall adhere to the benefit of and bind the city of Tropico and Pacific Light and Power Corporation and their respective successors and assigns.

(4) The purchase of the property of Glendale Light and Power Company by Pacific Light and Power Corporation shall be taken as a consent by the latter corporation to all the terms and conditions of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of October, 1912.

DECISION NO. 269.

IN THE MATTER OF THE APPLICATION OF JANSS INVESTMENT COMPANY FOR PERMISSION TO ABANDON AND ESTABLISH ROAD CROSSINGS OVER THE LINE OF THE SOUTHERN PACIFIC COMPANY BETWEEN RAYMER AND HEWITT IN LOS ANGELES COUNTY, CALIFORNIA.

Application No. 36.

Decided October 14, 1912.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant in the above entitled action having, on October 10, 1912, made written request to this Commission that the above entitled action be dismissed.

It is hereby ordered that the above entitled action be and the same is hereby dismissed without prejudice.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION No. 270.

IN THE MATTER OF THE APPLICATION OF THE BURBANK ELECTRIC LIGHT AND POWER COMPANY AND G. H. DEACON FOR AN ORDER AUTHORIZING THE TRANSFER OF A FRANCHISE TO CONSTRUCT AN ELECTRIC LIGHT AND POWER SYSTEM IN THE CITY OF BURBANK, CALIFORNIA; AND AUTHORIZING THE CONSTRUCTION OF SAID SYSTEM. ALSO FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE OR WILL REQUIRE SUCH CONSTRUCTION. AND FOR AUTHORITY TO ISSUE TWO THOUSAND SHARES OF STOCK.

Application No. 187.

Decided October 14, 1912.

Charles Saulsbury, for Burbank Electric Light and Power Company.
G. H. Deacon, for Burbank Electric Light and Power Company.
G. J. Forbes, for City of Burbank.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

At the hearing of this application, it was shown by testimony that on the 4th day of May, 1912, G. H. Deacon made application to the board of trustees of the city of Burbank, California, a duly incorporated city of the sixth class, asking that notice be published as provided by law (Act 1229, General Laws of California), advertising for sale a franchise to construct and operate an electric pole and wire system in said city of Burbank, California, for the purpose of supplying the inhabitants of said city of Burbank with electric energy for heat, light, power, and all other purposes for which electricity may be used; that said notice was published by said board of trustees in manner and form prescribed by law, and that on June 29, 1912, after due compliance with all legal requirements, said franchise was awarded to said G. H. Deacon by said board of trustees of said city of Burbank, California, and that in pursuance of such award, said board of trustees of said city of Burbank did at a later date, to wit: on August 3, 1912, pass City Ordinance No. 38 of the said city of Burbank, California, granting said franchise to said G. H. Deacon. A certified copy of said notice of intent to sell said franchise, and of said Ordinance No. 38, confirming the award and sale of said franchise, are filed with the papers in this application and made a part of the pleadings herein.

The testimony further shows that said G. H. Deacon is the president of the Burbank Electric Light and Power Company, and that he

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secured said franchise for said company, wherefore he now asks to be authorized to sell and assign said franchise to said Burbank Electric Light and Power Company, and said company asks for authority to accept such assignment and purchase said franchise; that said city of Burbank, California, has a population of about one thousand people and is growing rapidly; that street improvements are being made to cost about one hundred thousand dollars, and that the city is wholly without public lighting, upon which condition applicants base their allegation, that public convenience and necessity require the exercise of the franchise rights above set forth, and the construction and operation thereunder of an electric pole and wire system in said city of Burbank, California, and the providing the inhabitants of said city with electricity for the purposes hereinbefore specified.

Statement showing the financial condition of the Burbank Electric Light and Power Company was filed with the application as required by the Commission, and testimony verifying said statement was given at the hearing.

The authorized capital stock of said Burbank Light and Power Company consists of 2,000 shares of common stock of the par value of ten dollars per share. The company was incorporated July 25, 1912, but no stock has been issued other than the amount required to complete the incorporation. No indebtedness has been incurred other than the cost of incorporating.

The incorporators and directors are: G. H. Deacon, president; Wm. Coryell, treasurer; F. A. Faust, general manager and assistant secretary; Helen M. Deacon, secretary; Lora B. Coryell, vice-president; and the persons named as incorporators and directors are ready to subscribe to the full amount of the capital stock and to pay cash at par therefor.

The length of transmission line, to be built at once, is estimated at 8,000 feet, the cost of which, together with transformers, station, etc., will be approximately $7,000. The line will carry a single phase of 2,200 volts circuit and a two-wire distributing circuit of 110 volts. Single cross arm construction will be used. Four transformers will be required at a cost of $2,500. The completed line will be about four miles in length and will cost approximately $20,000. The company expects to purchase electric energy from the Kern River power line of the Pacific Light and Power Company which passes through the city of Burbank.

Should such supply not be available, the company proposes to install and equip a plant at practically the cost of the transformer station. As the franchise granted to said G. H. Deacon by said city of Burbank, California, did not include the right to generate electricity, but only to construct and equip an electric pole and wire line for the transmission of

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electric energy, and the right to sell such energy, and as the application to the Commission was similarly restricted, containing no request for permission to generate electricity, applicants asked for and were granted permission to amend the application by incorporating therein such request to be permitted to generate electricity and to construct and equip the plant necessary if such action was considered advisable, it being understood that upon satisfactory assurance that said city of Burbank has granted a further franchise to said G. H. Deacon or to said Burbank Electric Light and Power Company to construct the necessary plant to generate electric energy, the Commission will issue a supplemental order authorizing said G. H. Deacon or said Burbank Electric Light and Power Company to exercise said additional franchise rights.

A careful consideration and analysis of the application and the testimony offered in support thereof, convince me:

First—That the franchise to construct and equip an electric pole and wire system for the purpose of furnishing electric energy to the residents and users of such energy in the city of Burbank, California, was granted to G. H. Deacon by Ordinance No. 38, passed by the board of trustees of said city of Burbank, California, on August 3, 1912, and that said G. H. Deacon secured said franchise for, and should now be authorized to assign and transfer said franchise to the Burbank Electric Light and Power Company, and said Burbank Electric Light and Power Company should be authorized to receive such assignment and transfer.

Second—That public convenience and necessity require, and will require, and the interest of the public will best be served by the exercise of the rights acquired by the terms of said franchise, to wit: the construction and operation of an electric pole and wire system for the purpose of supplying the inhabitants of the city of Burbank with electricity for heat, light, power and all purposes for which electricity is used, such construction and equipment to include, if necessary, the installation and equipment of a plant to generate electric energy, for which latter purpose supplemental order of this Commission will be necessary.

Third—That the plan proposed by the Burbank Electric Light and Power Company for financing the building and equipment of said electric plant is a reasonable and feasible one, and that the purposes to which said company proposes to devote the proceeds from the sale of stock for which permission is asked in the application under consideration, are such as are contemplated by the terms of the Public Utilities Act, not in whole or in part reasonably chargeable to operating expenses or to income, and that permission to sell 2,000 shares of stock at ten dollars per share should be given said Burbank Electric Light and Power Company subject to the conditions expressed in the order herein.

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I therefore recommend the following order:

ORDER.

The Burbank Electric Light and Power Company, a corporation, and G. H. Deacon, having asked that the Railroad Commission of the State of California approve of the sale by said G. H. Deacon to said company and the purchase by said company from said G. H. Deacon of a certain franchise heretofore, to wit: on August 3, 1912, sold to said G. H. Deacon by the city of Burbank, California, as shown by Ordinance No. 38 of said city, passed by the board of trustees thereof, and for a certificate that public convenience and necessity require the exercise of the rights acquired under the terms of said franchise, to wit: the right to construct and operate an electric pole and wire system, to be used for the purpose of supplying the inhabitants of Burbank, California, with electric energy for heat, light, power and for such other purposes as electricity is used, and for permission to issue 2,000 shares of common stock and sell same at par or ten dollars per share, the proceeds to be used for the construction and equipment of said plant, and the testimony showing:

First—That said franchise was granted to said G. H. Deacon.

Second—That said G. H. Deacon obtained said franchise for said Burbank Electric Light and Power Company.

Third—That public convenience and necessity require the exercise of the rights arising under said franchise.

Fourth—That the purposes for which said Burbank Electric Light and Power Company proposes to devote the money received from the sale of stock as prayed for in the application are legitimate, and the amount asked for reasonable, and not in whole or in part reasonably chargeable to operating expenses or to income.

Now, therefore, it is hereby *held* and *ordered,* that G. H. Deacon is authorized to sell and assign to the Burbank Electric Light and Power Company, and the Burbank Electric Light and Power Company is authorized to purchase and accept assignment from said G. H. Deacon of all his right, title and interest in and to a certain franchise to construct and operate an electric pole and wire system in the city of Burbank, California, heretofore, to wit: on August 3, 1912, granted to said G. H. Deacon by the board of trustees of said city of Burbank, California.

That public convenience and necessity require and will require, and the public will best be served by the exercise of the rights arising under said franchise to construct and operate an electric pole and wire system in said city of Burbank, California, and if necessary to construct and operate a plant in said city of Burbank, California, to generate electric energy.

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That applicants be permitted to issue 2,000 shares of common stock and to sell said stock at not less than par or ten dollars per share for the purpose of financing the construction and equipment of said plant, it being specifically ordered that permission to sell stock under this order applies only to stock sold before the 9th day of October, 1913.

It is further ordered that the Burbank Electric Light and Power Company shall devote the proceeds from the sale of said stock only to the uses herein set forth, viz., the construction and equipment of said electric plant which includes the acquisition of real estate upon which to erect buildings necessary to such plant, all as specified in the application in this proceeding, and once each month, to wit: on the twenty-fifth day of each month, the said Burbank Electric Light and Power Company shall report in writing to the Railroad Commission of the State of California, the amount of stock sold and the disposition of moneys received from such sale in accordance with General Order No. 24, which, in so far as applicable, is made a part of this Order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

DECISION NO. 271.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES RAILWAY CORPORATION FOR PERMISSION TO ALTER FREIGHT AND PASSENGER SERVICE ON THE LOS ANGELES AND REDONDO RAILWAY.

Case No. 215.

Decided October 11, 1912.

REPORT OF THE COMMISSION.

This application was heard on the second day of November, 1911, and the carrier was given permission to discontinue certain service as applied for in the application. Through some mistake the order does not now appear to be in the files, and this order is entered *nunc pro tunc*, and permission is granted to the Los Angeles Railway Corporation to modify its service as applied for in the application.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION NO. 272.

IN THE MATTER OF THE APPLICATION OF E. W. PAYNE FOR AN ORDER AUTHORIZING THE CONVEYANCE OF THE MELVIN PLACE WATER PLANT, LOS ANGELES COUNTY, CALIFORNIA, TO WM. E. BALL, AND OF W. E. BALL TO PURCHASE SAID PLANT.

Application No. 217.

Decided October 11, 1912.

L. R. & S. H. Garrett and *D. A. Jacobs,* for applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The pleadings under this application disclose and the testimony given at the hearing shows that on June 1, 1910, E. W. Payne purchased from the "Home Builders," a corporation, a certain water plant or system known as Melvin Place Water Plant, in Los Angeles County, California, but not within corporate limits, such plant or system comprising lots (4) and (5) of Melvin Place in the county of Los Angeles, California, including a house, engine house, tanks, pump, pipes and piping connected therewith, and all easements, rights of way and appurtenances thereto, and since that time to April 1, 1912, managed and conducted said water plant or system; that said plant is not incorporated and that said E. W. Payne is sole owner thereof;

That said plant or system supplies water for domestic purposes to approximately one hundred and twenty-five customers within a radius of about one mile of the location of said plant or sytem and that for some time previous to April 1, 1912, the expenses of conducting said plant had exceeded the income therefrom;

That on or about March 25, 1912, said E. W. Payne entered into an agreement with said Wm. E. Ball to sell said plant to said Ball, and that thereafter, to wit, on April 1st said Ball assumed charge of said plant and has since managed and is now managing said plant, and that under the management of said Ball said plant has been conducted at a profit of about ninety dollars per month. Said E. W. Payne now asks permission under section 51(*a*) of the Public Utilities Act to sell and transfer said plant to said Ball for the reason that he is physically and financially unable to manage it, and said Wm. E. Ball asks to be authorized to purchase said plant. No one appeared at the hearing in opposition to the application, and applicant presented affidavits from some of the patrons of the Melvin Place Water Company approving said transfer

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of ownership and requesting the Commission to approve same, and it appearing that the interests of the residents of Melvin Place and all who are supplied with water by the said Melvin Place Water Plant will be best served and promoted by permitting and approving the sale by said E. W. Payne of said Melvin Place Water Plant to said Wm. E. Ball; I recommend that such sale be permitted and submit the following order:

ORDER.

Whereas E. W. Payne of Los Angeles, California, is owner in fee simple of a certain water plant or system in Los Angeles County, California, devoted to public use, known as Melvin Place Water Plant; and

Whereas said E. W. Payne is physically and financially unable to properly manage and conduct the affairs of said plant and desires to sell same to Wm. E. Ball and has applied to the Railroad Commission for permission to sell said plant to said Wm. E. Ball, and said Wm. E. Ball having applied for permission to purchase said plant, as provided in section 51(*a*) of the Public Utilities Act, and it appearing from the testimony at the hearing of said application and from the financial statement filed in this proceeding by said Wm. E. Ball that he is in a position to successfully manage and conduct said Melvin Place Water Plant, and that the interests of the people who are being supplied with water by the said Melvin Place Water Plant will best be served and promoted by said sale and purchase of said water plant.

The price for which the property is to be purchased, namely, the sum of twenty-two thousand five hundred ($22,500) dollars, shall not be taken as against this Commission or any other public authority as representing for rate fixing or any other purpose the present fair value of the property.

It is hereby ordered that said E. W. Payne is hereby authorized to sell said Melvin Place Water Plant to said Wm. E. Ball at the price and on the terms set forth in the agreement hereinbefore referred to between said E. W. Payne and Wm. E. Ball, certified copy of which has been filed with the Commission and made a part of the pleadings herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION NO. 273.

IN THE MATTER OF THE APPLICATION OF PASADENA LAKE VINEYARD LAND AND WATER COMPANY FOR AUTHORIZATION TO SELL TO THE CITY OF PASADENA, AND OF THE CITY OF PASADENA TO MAKE SAID PURCHASE.

Application No. 222.

Decided October 14, 1912.

Application of certain water companies to sell all of their property, except their commercial and corporate books, their cash on hand, their accounts receivable and the capital stock, to the city of Pasadena.

Held, As the utility corporations are to go out of existence shortly after the respective sales are consummated and as the price to be paid by the city is based on actual value of the property as carefully determined by the city and not on capitalization, such careful examination by the Commission into the value of the property to be sold is not as necessary as it would be if the sale was by one public utility to a second privately owned utility.

William J. Carr, for City of Pasadena.
W. S. Wright, for Pasadena Lake Vineyard Land and Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is one of three applications made by the city of Pasadena to buy and by three water companies to sell all the property of said water companies except their commercial and corporate books, their cash on hand and in the banks, their bills and accounts receivable, and their stock in corporations. The other applications are No. 223, North Pasadena Land and Water Company, and No. 238, Pasadena Land and Water Company.

These three companies serve at least 95 per cent of the people of Pasadena with water and also a portion of the city of South Pasadena and some outlying territory. They derive their water from gravity water in the Arroyo Seco and from wells in various localities.

On June 27, 1912, the electors of the city of Pasadena authorized the city, by a vote of approximately 10 to 1, to incur a bonded indebtedness of one million two hundred and fifty thousand ($1,250,000) dollars for the acquisition of a waterworks and system to supply the city and its inhabitants with water. The city has made definite offers to each of these three water companies for the property hereinbefore referred to and these offers have been accepted by each of the companies at stockholders' meetings at which more than two thirds of the respective stockholders voted in favor of accepting the city's offer.

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The city's offer in each case was based on inventories prepared by it with great care, showing the age of the different items constituting the property of the water companies, such as reservoirs, pipe, meters, etc., the present cost of reproduction, the depreciation and the present value. Certain items such as business value and water assets have been added to represent the value to the city of being able to take over the properties now and the cost to the city of developing other sources of water supply if it did not purchase the properties of the present water companies. As the work in this connection has been thoroughly done and is satisfactory to all parties concerned, the Commission did not make the careful examination into the value of the property to be sold as it would if this were a sale by one public utility to a second privately-owned utility. As all the three water companies are to go out of existence shortly after the respective sales are consummated, and as the price to be paid by the city is based on actual value of the property and not on capitalization, no inquiry was made by the Commission into the stocks, bonds or other financial affairs of the three water companies.

The companies each serve some territory outside of the municipal limits of Pasadena. The Pasadena Lake Vineyard Land and Water Company serves one ranch outside the city limits, the Pasadena Land and Water Company serves a portion of the city of South Pasadena and the North Pasadena Land and Water Company serves a small area in Altadena outside of the city limits of Pasadena. The city of Pasadena stipulated upon the hearing that it takes the property of these three water companies subject to all legal claims for water which might have been enforced against these companies, including the claims affecting territory outside of the city limits of Pasadena. The written agreements between the city and these companies will contain a similar provision. The city will, upon execution of the same, file with the Commission certified copies of these agreements.

The price agreed upon between the city of Pasadena and Pasadena Lake Vineyard Land and Water Company for the property which the city desires to buy from the water company is $621,622.21 plus betterments since May 1, 1912, less depreciation since said date.

I find that public convenience and necessity will be served by the grant of this application and submit herewith the following form of order:

ORDER.

Pasadena Lake Vineyard Land and Water Company having filed with the Commission its application for authority to sell all of its property except its commercial and corporate books, its cash on hand and in the banks, its bills and accounts receivable and its stock in corporations, to the city of Pasadena for the sum of $621,622.31 plus the value of betterments since May 1, 1912, less depreciation since said date,

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and the city of Pasadena having filed its application for authority to purchase said property for said sum, and a public hearing having been held on said applications and the city of Pasadena having stipulated that it will take the property of said company subject to all legal claims for water which might have been enforced against Pasadena Lake Vineyard Land and Water Company, including the claims affecting territory outside of the city limits of Pasadena, and the Commission finding that public convenience and necessity will be served by said sale and purchase of said property,

It is hereby ordered that said applications be and the same are hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

DECISION NO. 274.

IN THE MATTER OF THE APPLICATION OF NORTH PASADENA LAND AND WATER COMPANY FOR AUTHORIZATION TO SELL TO THE CITY OF PASADENA AND OF THE CITY OF PASADENA TO MAKE SAID PURCHASE.

Application No. 223.

Decided October 14, 1912.

William J. Carr, for City of Pasadena.
Porter & Sutton, for North Pasadena Land and Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is one of three applications for the sale of their property, with certain specified exceptions by three water companies to the city of Pasadena and by the city of Pasadena to buy the same. For a discussion of the general facts applicable to all these three applications, see the opinion on Application No. 222.

The price agreed upon between the city of Pasadena and North Pasadena Land and Water Company for the property of the latter in Pasadena and territory adjacent thereto, except its commercial and corporate books, its cash on hand and in the banks, its bills and accounts

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receivable and its stock in corporations, is the sum of $194,217.83 plus the value of betterments since May 1, 1912, less depreciation since said date and less obligations assumed by the city on certain indebtedness of the water company approximating on the day of the filing of the petition in this proceeding the sum of $24,000.

I find that public convenience and necessity will be served by the grant of these applications, and submit the following form of order:

ORDER.

North Pasadena Land and Water Company having filed with the Commission its application for authority to sell all of its property except its commercial and corporate books, its cash on hand and in the banks, its bills and accounts receivable and its stock in corporations, to the city of Pasadena for the sum of $194,217.83 plus the value of betterments since May 1, 1912, less depreciation since said date and less obligations assumed by the city on certain indebtedness of the water company approximating on the day of the filing of the petition in this proceeding the sum of $24,000, and the city of Pasadena having filed its application for authority to purchase said property for said sum, and a public hearing having been held on said applications and the city of Pasadena having stipulated that it will take the property of said company subject to all legal claims for water which might have been enforced against North Pasadena Land and Water Company, including the claims affecting territory outside of the city limits of Pasadena, and the Commission finding that public convenience and necessity will be served by said sale and purchase of said property,

It is hereby ordered that said applications be and the same are hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION No. 275.

IN THE MATTER OF THE APPLICATION OF SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA FOR AUTHORIZATION TO ISSUE ADDITIONAL BONDS.

Application No. 230.

Decided October 11, 1912.

Application for permission to issue bonds in an amount which, sold at 85, will cover projected expenditure for improvements in the sum of $40,500. The amount of bonds necessary, as figured by applicant, would be $47,500. Also, for authority to issue bonds in the sum of $26,000 to refund certain notes.

Held, The Commission is not inclined to approve of a bond issue in excess of what was voluntarily agreed upon by the parties under the conditions of the mortgage.

Held, That while applicant is not now entitled under mortgage stipulation to any issue of bonds, in view of the fact that its earnings are rapidly increasing it soon will be entitled, and the trustee will approve of such issue, at which time, if applicant will make a verified statement to the Commission that, under the conditions of the mortgage, it is entitled to issue further bonds, this Commission will, by a supplemental order, authorize such issue to the amount applicant is entitled.

Held, That applicant be authorized to issue bonds in the sum of not exceeding $47,000, subject, however, to the stipulation and agreement contained in the mortgage.

Wilson & Wilson, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Applicant is a corporation organized and doing business under the laws of the State of California, date of incorporation, February 27, 1911, with principal place of business in Los Angeles, California. The following statement of facts which appear in the pleadings and which were developed by the testimony at the hearing are necessary to a proper consideration of this application.

Southern Counties Gas Company was formed by a consolidation of Southern California Edison Company, of Whittier; Southern California Edison Company, of Santa Ana; Orange County Gas Company, operating in Anaheim, Orange, and Fullerton; and Home Gas Company of Fullerton. Applicant later acquired Covina Valley Gas Company and since has added by extensions and improvements to its plant. It now operates gas plants and distributes and sells gas as follows: gas plant at Santa Ana, which serves through its distributing system and high pressure lines the cities of Santa Ana, Orange, Anaheim, and Fullerton; gas plant at Whittier, which serves through its distributing system the city of Whittier; gas plant at Monrovia, which serves through its distributing

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system and high pressure lines the cities of Monrovia, Sierra Madre, Arcadia, South Santa Anita, and El Monte; gas plant at Covina, which serves through its distributing system and high pressure lines the cities of Covina, Azusa and Glendora. Applicant also serves San Gabriel and sections of unincorporated territory contiguous to the above-named municipalities.

Southern Counties Gas Company of California has an authorized issue of $500,000 (5,000 shares of the par value of $100 per share) of common stock. All the common stock has been issued. There is also an authorized issue of $500,000 (5,000 shares of par value of $100 per share) of six per cent preferred stock, cumulative after the fiscal year ending June 30, 1913. Three hundred and forty thousand dollars of preferred stock has been issued, being 3,400 shares of preferred stock sold at $85 per share, and the balance in the sum of $160,000 (1,600 shares of the par value of $100 per share) is held in escrow under an agreement with the Los Angeles Trust and Savings Bank, which provides for further issue of preferred stock for improvements, acquisitions of property and betterments when they shall have been approved in writing by J. H. Adams & Company, and when the net earnings applicable to dividends on preferred stock including the net earnings applicable to dividends on preferred stock on property to be acquired for stock to be issued for the acquirement of operating property, exclusive of operating, maintenance or depreciation charges, shall be for the twelve months next preceding each respective application for the certification of stock at least one and one quarter times the dividend charges on all preferred stock outstanding against the property, together with that stock in each respective application sought to be certified and issued.

The common stock was disposed of by applicant as follows:

1,400	shares to J. H. Adams & Company for underwriting services.
1,250	shares to F. R. Bain, in connection with purchase of preferred stock.
1,800	shares to C. S. S. Forney, for promotion services.
550	shares to purchasers of preferred stock.
Total 5,000	shares.

It appears that no money was received from the sale of the common stock, and no consideration other than the services in promoting the company and floating the bonds. The common stock of J. H. Adams & Company and of C. S. S. Forney has since been purchased for cash by F. R. Bain.

Applicant has an authorized issue of 1,000,000 of 30-year 6 per cent first mortgage bonds. These bonds are in denominations of $500 each and are issuable under a mortgage and deed of trust dated April 1, 1911, to Los Angeles Trust and Savings Bank. There have been issued under

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this mortgage bonds in the sum of $557,000. Of these, bonds to the amount of $2,500 have been canceled, leaving bonds outstanding in the sum of $554,500. The remaining bonds in the sum of $443,000 are issuable on the following terms as provided in the mortgage above referred to:

> "Section 6. Of the bonds authorized to be issued hereunder and to be secured hereby, bonds for the aggregate principal sum of four hundred and forty-three thousand ($443,000) dollars, being bonds numbered one thousand one hundred fifteen (1,115) to two thousand (2,000), both inclusive, shall by the trustee be certified and delivered to the company to an amount in par value equal to seventy-five (75) per cent of the money actually expended by the company for improvements, acquisitions and betterments; but only when such improvements, acquisitions and betterments have been approved, in writing, by J. H. Adams & Company, and when the net earnings of the company (including therein for the purposes of this section, the net earnings of properties to be acquired, in the event that bonds are certified for the purchase of revenue-producing property) shall have been for twelve (12) months next preceding each respective application for certification of bonds at least one and one half times the annual interest charges on all bonds secured hereby then outstanding, together with those bonds in each respective application sought to be certified and issued.
>
> "Section 7. For the purpose of this article, net earnings shall be understood to be the entire gross earnings of the company (including therein, however, only the gross profit from merchandise sold in the ordinary course of business), less taxes, franchise or license fees, insurance, rentals and all proper and customary operating and maintenance charges." (See page 27 of mortgage on file with Commission.)

The applicant submits an estimate of the value of its properties as of August 31, 1912, in the sum of $642,948.37 based upon an appraisement made by Bion J. Arnold, as of April 1, 1911, with additions thereto since such appraisement was made. Applicant submits a statement of its earnings for the fiscal year ending June 30, 1912, showing gross earnings in the amount of $178,461.13, net earnings of $48,390.20, and a net profit after deducting bond interest, interest on borrowed money and bond expenses in the sum of $10,005.33. A subsequent statement of earnings submitted by applicant shows net earnings for the twelve months ending September 30, 1912, of $49,645.96.

Southern Counties Gas Company of California now applies to the Commission for authority to issue bonds in the sum of $26,000 to refund certain notes upon which money was borrowed from banks and used for

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capital expenditures, the money borrowed being represented by notes due as follows:

National Bank of Orange	$2,500,	due October 13, 1912
First National Bank of Santa Ana	2,500,	due October 13, 1912
National Bank of Fullerton	1,000,	due October 13, 1912
National Bank of Monrovia	1,000,	due October 13, 1912
First National Bank of Glendora	2,500,	due October 13, 1912
National Bank of Sierra Madre	2,500,	due October 13, 1912
National Bank of Fullerton	2,000,	due October 21, 1912
Whittier National Bank	2,500,	due October 30, 1912
National Bank of Orange	2,500,	due October 30, 1912
Whittier National Bank	2,500,	due December 20, 1912
Whittier National Bank	2,500,	due December 20, 1912
Total	$24,000.	

Applicant has since reduced the amount of its indebtedness to the banks above mentioned to a total of $21,592.33. The money obtained on these notes, to refund which bonds are now sought, was spent for improvements and betterments appearing in certificate filed with the Commission, examined and certified to by the Auditing Department of the Commission.

Applicant seeks further for an issue of bonds which, sold at eighty-five, will cover projected expenditures for improvements in the sum of $40,500. The amount of bonds necessary as figured by applicant would be $47,500. The improvements which applicant desires to make from the moneys to be derived from the sale of such bonds are as follows:

Santa Ana Gas Plant:	
New generating set with piping	$2,500 00
New direct connector engine and exhauster	850 00
Whittier Gas Plant:	
New generator and wash-box	2,000 00
Corina Gas Plant:	
Rebuilding generator to increase capacity	1,000 00
New direct connector exhauster	650 00
Monrovia Gas Plant:	
New generating set with all make pipes	3,000 00
New 100 h.p. boiler, set	2,800 00
New direct connector exhauster and engine	650 00
New direct connector blower and engine	530 00
Anaheim Distributing System:	
New 3-inch line to Fullerton, 12,000 feet	3,600 00
Monrovia Distributing System:	
Extension of 3-inch line to Michillinda, 9,000 feet	2,700 00
8,000 feet 2-inch mains in Michillinda	1,600 00
Extension of 3-inch line to San Gabriel, 19,000 feet	5,700 00
10,000 feet 2-inch mains in San Gabriel	2,000 00
Extension of 3-inch line to Duarte, 7,000 feet	2,100 00
3,000 feet 1-inch mains to Duarte	600 00
Small extensions all over the system not included in above	6,800 00
Engineering and contingencies	1,420 00
	$40,500 00

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At the hearing in this case, applicant's attention was called to those sections of its mortgage which limit the amount of bonds it may issue to 75 per cent of the moneys actually expended for construction, improvements, etc., and the further limitation that additional bonds can be issued only when the net earnings of the company are one and one half times the interest charges on the outstanding bonds plus the interest charges on the bonds proposed to be issued. Southern Counties Gas Company of California thereupon amended its application to accord with the terms of its mortgage and asked that the Commission authorize it to issue bonds to the amount of 75 per cent of the moneys expended, in the sum of $21,592.32 and of the moneys to be expended in improvements, betterments, etc., in the sum of $40,500 or $46,569.24, such authorization to be made by the Commission upon receiving from applicant a verified statement that the conditions of the mortgage have been complied with; in other words, that the net earnings at the time such verified statement is made equal one and one half times the interest on the present bonded indebtedness plus one and one half times the interest on the further issue asked for.

By reference to the mortgage hereinbefore mentioned given by applicant to the Los Angeles Trust and Savings Bank, it will be seen that there are two limitations as to the issuance of further bonds which have been authorized, one being that bonds can be issued for but 75 per cent of the actual money expended in plant extension and betterment, and the other that the earnings of the company for the twelve months preceding the application for further bond issue must equal one and one half times the amount of the interest on the present bonded indebtedness, plus one and one half times the interest on the proposed further bond issue. The net earnings of the company for the twelve months preceding the present application, were $49,645.96. The interest on the present bonded indebtedness for the same period was $33,240, and the interest on the proposed further bond issue for one year would be $2,779.14, or a total interest of approximately $36,000. One and one half times this amount would be $54,000, or thereabouts, showing that the earnings of the company for the twelve months preceding the present application were about $4,300 less than the earnings stipulated by the conditions in the mortgage.

A careful analysis of the past and present circumstances of applicant as disclosed by the testimony in the case, shows that the affairs of the company previous to the time the present management and control were inaugurated, were conducted in a very haphazard and careless manner, but that since the present management assumed control, such management has been characterized by good judgment and discretion with the result that the earnings of the company have been largely increased, and while the earnings for the year preceding the present application

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are not sufficient to justify the trustee in authorizing the amount of bonds asked for in the application, or any further issue at present, it may well be assumed that that condition arises from the fact that the present management has had control for only about eight months and that had this application been deferred until the present management had been in control for one year, the company could doubtless easily have justified its application for the bond issue prayed for. However, the Commission is not inclined to approve of a bond issue in excess of what was voluntarily agreed upon by the parties hereto under the conditions of the mortgage. Under the first condition as set forth in said mortgage governing the issue of further bonds, on the expenditure of $21,592.32 applicant would be entitled to a bond issue of 75 per cent of that sum, or $16,194.24. For the contemplated expense (a statement of which appears above) of $40,500, applicant would be entitled to an issue in bonds of $30,125, or a total of $46,569.24, but the second condition found in the mortgage, namely, that the earnings of the company for the twelve months preceding the application must equal one and one half times the interest on the present bonded indebtedness, plus one and one half times the interest on the bonds asked for, would prevent the issuance of any bonds at the present time for the reason that the earnings of the company for the twelve months preceding the application were but $49,645.96, while the earnings required by the mortgage stipulation are $54,029.72.

We have gone very carefully into the affairs of the company as will be seen by reference to the transcript, and an examination of witnesses extending from the time the company was organized to the present moment, and such examination has satisfied us that the present management has greatly improved the condition of the company and that a continuation of such wise and careful management should make it possible for the company to be successful in its future operations. While the testimony shows that the common stock was originally issued as a bonus to the promoter and others, and given with the sale of preferred stock, it is also in evidence that Mr. Bain, the present president and the largest stockholder of the company, has bought and paid cash for a considerable amount of said common stock for the purpose of eliminating undesirable conditions in the ownership of such stock, and to place the company in a position where harmony and wise control and management can prevail.

I am therefore of the opinion that while under the conditions of the mortgage additional bonds cannot now be issued. While we believe that the conditions of the mortgage should be considered by the Commission, we also believe that were it not for the conditions of said mortgage governing the further issue, the prayer of the applicant to issue bonds to the amount stated in the application, as amended, would

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unquestionably be granted. As an evidence of the improved condition of the applicant under the present management, it appears in the evidence that while former issues of the bonds of applicant were sold at eighty-five, the latest issue was sold at eighty-nine. In order, therefore, to place the applicant in a position to proceed at the earliest possible moment with the proposed extensions and betterments, and to refund the $21,592.32 already expended in plant improvement and betterment, with as little formality as possible, I recommend that applicant be authorized to issue bonds in the sum of not exceeding $47,000, subject, however, to the stipulation and agreement contained in the mortgage. In other words, while applicant is not now entitled under the mortgage stipulation to any issue of bonds, in view of the fact that its earnings are rapidly increasing, it soon will be entitled, and the trustee will approve of such issue, at which time if applicant will make a verified statement to the Commission that under the conditions of the mortgage it is entitled to issue further bonds, this Commission will, by a supplemental order, authorize such issue to the amount applicant is entitled until the amount so verified and authorized to the Commission shall have reached the aforesaid sum of $47,000, such issues to be subject to the conditions set forth in the order.

I, therefore, recommend the following order:

ORDER.

Whereas the Southern Counties Gas Company of California, a corporation organized and existing under the laws of California, for the purpose of serving the inhabitants of various counties, cities and towns in Southern California with gas for heat, light and domestic purposes, and for such other purposes as gas is used, has applied to the Commission for an authorization to issue additional bonds for the purpose of refunding such sums already expended and to be expended in plant extensions and betterments; and

Whereas a hearing was duly held on the 10th day of October, 1912, and the affairs of said applicant closely and thoroughly gone into and considered, and it appearing that under ordinary circumstances and without any other limitation as to the further issue of bonds the Commission would authorize the issue prayed for, but that owing to conditions set forth in the mortgage executed by applicant to the Los Angeles Trust and Savings Bank, which mortgage contains the stipulations governing further issue of bonds (above set forth), the Commission will authorize the present issue of bonds only on terms expressed in the mortgage, but believes that applicant should be permitted to make a further issue of bonds in the sum total of $47,000 when its condition as to earnings will comply with the mortgage stipulations,

Now, therefore, be it *ordered* that the Southern Counties Gas Com-

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pany of California is hereby authorized to furnish to the Railroad Commission of the State of California at any time that it is in position to do so a verified statement showing that its earnings are such as to entitle it to issue further bonds under and in compliance with the stipulations of the mortgage given to the Los Angeles Trust and Savings Bank, and that the Commission will, by supplemental order from time to time as such showing is made, authorize the issue by applicant of further bonds, the total amount to be issued under this opinion and order not to exceed the sum of $47,000, and said bonds shall not be sold for less than eighty-five; that the moneys received from the sale of bonds so issued are to be expended only for the purposes set forth herein, to wit: The refunding of amounts spent for plant extension and betterment in the past and future, it being made a condition in this order that reference is hereby had only to bonds issued on or before January 1, 1913. That on the fifteenth day of each and every month following any such issue or issues of bonds, applicant will furnish to the Commission in writing a verified report of the disposition of the bonds so issued, comprehending the amount sold, price received therefor and the disposition of the moneys received from such sale.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

DECISION No. 276.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY AND OF NORTH SACRAMENTO LIGHT AND WATER COMPANY FOR AN ORDER AUTHORIZING THE SALE OF THE ELECTRIC DISTRIBUTION SYSTEM OF THE NORTH SACRAMENTO LIGHT AND WATER COMPANY TO GREAT WESTERN POWER COMPANY.

Application No. 237.

Decided October 14, 1912.

Application by one public utility for permission to sell its electric distribution system to another public utility. The value of the different items of the property to be sold, as submitted by applicant, examined.

Held, That a valuation by the Commission's Engineering Department is not necessary in this case, and that approval to the transfer should be given with the understanding that the purchase price shall not be taken before this Commis-

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sion, or any other public authority, to represent the present value of the property for rate fixing or any other purpose.

Chaffee E. Hall, for applicants.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

Applicants ask for an order of this Commission authorizing the sale by North Sacramento Light and Water Company to Great Western Power Company and the purchase by the latter company from the former of the substation building with equipment therein, electrical transmission pole lines, contracts, rights of way and good will of North Sacramento Light and Water Company, together with a piece of real estate 100 feet square to be selected by Great Western Power Company for substation purposes, as appears in greater detail in agreement between these parties, dated August 8, 1912, and attached to the petition in this proceeding.

North Sacramento Light and Water Company, hereinafter called the Light Company, was organized in August, 1911, for the purpose of supplying electrical energy and water to a tract of some four thousand acres of land lying north of the city of Sacramento across the American River and owned and subdivided by the North Sacramento Land Company. The light company built a substation and some nine and one half miles of transmission lines and has twenty-five services for electricity, of which six are for power alone. The light company secures its current from Great Western Power Company under a contract naming a rate of 1.06 cents per kilowatt hour. The light company has not established a fixed rate for electric energy. Its one definite charge is 5 cents per kilowatt hour for pumping, which rate has been established by contract with one consumer. The light company's total revenue from electric current from November 1, 1911, to July 1, 1912, was only $70.00. The Great Western Power Company, however, has signed up 268 kilowatt hours from this distributing system and expects to secure therefrom a gross revenue of some $300.00 per month. The light company will retain its water properties and asks authority to sell only its electrical distributing system and appurtenances.

The price agreed upon between applicants, as alleged in the petition, is $9,000. It appeared at the hearing, however, that the Great Western Power Company is also to assume a claim of $3,500 of Sacramento Valley Colonization Company, being an adjustment of a claim of $5,000, so that the real cost of the property is to be $12,500. At the hearing the Commission examined the value of the different items of the property to be sold, with a view to ascertaining the value of the property as a whole. I am of the opinion that this is not a case in which it is necessary to have a valuation made by this Commission's engineering department, and that the applications should be granted, provided that

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the order contain the usual provision in cases of this kind to the effect that the price now to be paid for the property shall not be taken before this Commission or any other public authority to represent the present value of the property for rate fixing or any other purpose.

The light company knows little of the electric business and is not in a position to give economical and efficient service to the inhabitants of the North Sacramento Land Company's tract and the adjacent land. The Great Western Power Company, on the other hand, is willing and able to give such service. As contrasted with the 5-cent pumping rate established by the light company, the Great Western Power Company will establish a rate from 3 cents down. While the latter company's district manager testified that the lighting rate would be 9 cents per kilowatt, the rate, when established, will not exceed 8 cents. I find that public convenience and necessity will be served by the grant of these applications and recommend that they be granted. I submit the following form of order:

ORDER.

North Sacramento Light and Water Company having filed with this Commission its application for an order authorizing the sale of its electrical distributing system in the North Sacramento Land Company's tract, north of Sacramento, to Great Western Power Company for the sum of nine thousand ($9,000) dollars and the assumption by Great Western Power Company of an indebtedness of said North Sacramento Light and Water Company in the amount of three thousand five hundred ($3,500) dollars, said property to be so sold being more particularly described in agreement dated August 8, 1912, between North Sacramento Light and Water Company and Great Western Power Company, a copy of which agreement is attached to the petition in this proceeding, and Great Western Power Company having filed its application for authorization to purchase said property for said sum, and a public hearing having been held on said application, and the Commission finding that public convenience and necessity will be served by the grant of said applications,

It is hereby ordered that said applications be and the same are hereby granted, subject to the express condition that the sum for which said property is to be sold and purchased, as aforesaid, shall not be used before this Commission or any other public authority as representing for rate fixing or any other purpose the present value of said property. The acquisition of said property by said Great Western Power Company shall be deemed a consent by said company to the foregoing condition.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION No. 277.

IN THE MATTER OF THE APPLICATION OF THE PASADENA LAND AND WATER COMPANY FOR AUTHORIZATION TO SELL TO THE CITY OF PASADENA, AND OF THE CITY OF PASADENA TO MAKE SAID PURCHASE.

Application No. 238.

Decided October 14, 1912.

William J. Carr, for the City of Pasadena.
Porter & Sutton, for Pasadena Land and Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is the third of three applications of water companies to sell to the city of Pasadena their property with specified exceptions and of the city of Pasadena to purchase the same. The other two applications are No. 222, Pasadena Lake Vineyard Land and Water Company, and No. 223, North Pasadena Land and Water Company. For a discussion of the general facts applicable to all these three applications see the opinion on Application No. 222.

Pasadena Land and Water Company supplies water to a portion of the city of Pasadena and a portion of the city of South Pasadena. The price agreed upon between the company and the city of Pasadena for the company's property, except its commercial and corporate books, its cash on hand and in the banks, its bills and accounts receivable, and its stock in corporations, is $335,312.75 plus the value of betterments made after May 1, 1912, and less depreciation since that date.

I find that public convenience and necessity will be served by the grant of these applications and submit the following form of order:

ORDER.

Pasadena Land and Water Company having filed with the Commission its application for authority to sell all of its property except its commercial and corporate books, its cash on hand and in the banks, its bills and accounts receivable and its stock in corporations, to the city of Pasadena for the sum of $335,312.75 plus the value of betterments made after May 1, 1912 and less depreciation since said date, and the city of Pasadena having filed its application for authority to purchase said property for said sum, and a public hearing having been held on said applications and the city of Pasadena having stipulated that it will take the property of said company subject to all legal claims for water which might have been enforced against Pasadena Land and Water Com-

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pany, including the claims affecting territory outside of the city limits of Pasadena, and the Commission finding that public convenience and necessity will be served by said sale and purchase of said property.

It is hereby ordered that said applications be and the same are hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

DECISION No. 278.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, AND PACIFIC ELECTRIC RAILWAY COMPANY TO CANCEL WHARFAGE AND HANDLING CHARGES.

Case No. 253.

Decided October 14, 1912.

Applicants applied for permission to cancel items in their tariffs which provided for the absorption of wharfage and handling charges at certain ports. On the facts surrounding the receipt and delivery of freight at the wharves in question, the wharfage charge is a transportation charge and the handling charge not. The term transportation, herein, defined as meaning that service which, under its contract of carriage, the carrier is bound to perform; the term accessorial defined as meaning that service for which the carrier may exact extra compensation, whether they be transportation services or not. The character of the entire movement is to be determined by applying the test prescribed in the Texarkana case (204 U. S. 403).

Held. Where the absorption is of a charge for a service which is comprehended under the transportation service and which must be performed by the carrier under its contract of carriage, the Commission can control; but where the absorption is of a charge for an accessorial service or, as in the present case, is so intermixed with accessorial services that it is difficult to determine its true character, we believe public policy requires the separation of the charges and the freight rate be made reasonable in itself and the accessorial charge likewise reasonable. The so-called Chicago Stockyard cases discussed. The jurisdiction of cities over transportation service discussed.

C. W. Durbrow, for Southern Pacific Company.

E. W. Camp, for Atchison, Topeka and Santa Fe Railway Company.

A. S. Halstead, for San Pedro, Los Angeles and Salt Lake Railroad Company.

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D. W. Pontius, for Pacific Electric Railway Company.
Joseph P. Loeb, for the Harbor Commission of Los Angeles.
F. P. Gregson, for the Associated Jobbers of Los Angeles.

REPORT OF THE COMMISSION.

ESHLEMAN and EDGERTON, *Commissioners.*

On the fourth day of October, 1911, this Commission decided Application No. 115 and ordered in a scale of class and commodity rates on the line of the Southern Pacific Company between the harbor of San Pedro and the city of Los Angeles. This case arose out of a complaint of the Board of Harbor Commissioners of the city of Los Angeles against the Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad Company. In its original decision the Commission reserved a decision as to the second company and indicated that this company could meet the rates ordered in over the lines of the Southern Pacific Company, or at its option apply to the Commission for further action. Thereafter the carriers applied for a rehearing, which application was denied November 27, 1911, subsequent to which time an action was brought by the Southern Pacific Company in the Circuit Court of the United States at San Francisco to restrain the Commission's order, which application was denied by the court on the seventh day of February, 1912.

No appeal was taken from this decision. Subsequently the other carriers who join in this present application met the rates ordered in over the lines of the Southern Pacific Company between Los Angeles and the respective harbors served by these carriers. Now they all come before us asking to eliminate certain absorptions of wharfage and handling charges which have heretofore been made by them.

At the time of the original hearing on Case No. 115, it was suggested by the Commission that the carriers, parties to that proceeding, cause a separation of the wharfage and handling charges from the remainder of the freight rate, in order to avoid any such confusion as has since arisen, but the carriers did not see fit to act upon this suggestion. Thereupon, the Commission proceeded to a decision of the case and made its order reducing the rates under the then condition of wharfage and handling absorption, and in the decision on the application for a rehearing, the Commission specifically applied itself to this fact, and definitely asserted that it had considered this condition in rendering its order. The following language was used:

> "But aside from any of the considerations raised in the application for rehearing, as we have said, after again considering all the evidence, we are of the opinion that the original decision should stand. We did not make as great a reduction in these rates as we believe the evidence would justify because of the absorptions which

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the carriers make. If it were not for the making of these absorptions shown in the tariffs affected, we are of the opinion that the rates ordered in by the Commission are still too high. But absorptions and all other circumstances considered, we are still of the opinion that the rates set out in the original order are reasonable rates."

Therefore, this application to discontinue absorptions that were being made at the time the Commission investigated these rates will necessarily interfere with the adjustment which was then made. The Commission, as it was stated, took into consideration all the surrounding facts and circumstances and, not desiring to penalize the carriers for their voluntary absorption of these charges, allowed higher rates than would have been permitted had the carriers been collecting the wharfage and handling charges which appear in their tariffs.

The following tables will show the result upon the class and various commodity rates involved, of the granting of the application to discontinue absorbing wharfage and handling charges:

CLASS RATES.

	Rates in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Rates in effect prior to December 7, 1911	15	14	12	11	10	10	10	9	8½	8½
Rates now in effect as per decision in Case No. 115	12	11	10	8	7	7	6	5½	5	5
Rates which will be in effect if the wharfage and handling charge is not absorbed	14½	13½	12½	10½	9½	9½	8½	8	7½	7½

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COMMODITY RATES.

Commodity.	Rates in effect prior to December 7, 1911 (including wharfage and handling charges) per ton of 2000 pounds.	Present rate as per order in Case No. 115, effective December 7, 1911 (including wharfage and handling charges), per ton of 2000 pounds.	Wharfage and handling charges in effect at present time per ton of 2000 pounds.	Cost to consignee if wharfage and handling is not absorbed per ton of 2000 pounds.
Wheat	$1 00	$0 80	$0 50	$1 30
Corn	1 00	80	50	1 30
Oats	1 00	80	50	1 30
Barley	1 00	80	50	1 30
Rice	1 50	1 40	50	1 90
Flour	1 60	1 20	50	1 70
Feed	1 00	80	50	1 30
Hay	1 30	1 10	30	1 40
Tobacco	3 60	2 40	50	2 90
Potatoes	1 80	1 10	50	1 60
Beans	2 00	1 20	50	1 70
Green fruit	2 00	1 10	50	1 60
Dried fruit	1 43	1 04	50	1 54
Canned vegetables and fruit	2 00	1 20	50	1 70
Onions	1 80	1 10	50	1 60
Vegetables	1 80	1 40	50	1 90
Cranberries	2 00	1 60	50	2 10
Pineapples	2 00	1 10	50	1 60
Bananas	2 00	1 10	50	1 60
Seed	2 20	1 60	50	2 10
Malt	2 00	1 20	50	1 70
Coffee	2 00	1 40	50	1 90
Hops	2 00	1 40	50	1 90
Nuts	2 20	2 00	50	2 50
Packing-house products	2 00	1 40	50	1 90
Canned fish	2 00	1 20	50	1 70
Wool	3 60	2 00	sacks 1 00 bales 50	sacks 3 00 bales 2 50
Hides	2 00	1 40	45	1 85
Leather	2 20	1 60	50	2 10
Fertilizer	80	80	50	1 30
Canned milk	2 00	1 20	50	1 70
Butter	3 60	2 00	50	2 50
Cheese	3 60	2 00	50	2 50
Coal	1 20	1 00	50	1 50
Coke	1 20	90	50	1 40
Pig lead	2 00	1 40	50	1 90
Clay	1 70	1 00	50	1 50
Rock	50	50	25	75
Mineral water	2 00	1 40	50	1 90
Sugar	1 50	1 00	50	1 50
Iron — scrap	1 50	1 10	35	1 45
Iron — pig and bloom	1 50	1 10	35	1 45
Iron — railroad	1 50	1 10	35	1 45
Machinery	2 00	1 40	50	1 90
Structural iron	2 00	1 10	35	1 45
Iron — bar	1 50	1 10	35	1 45
Firebrick	1 70	1 00	50	1 50
Cement	1 80	75	50	1 25
Lime	1 00	1 00	30	1 30
Tiling	1 70	1 00	50	1 50
Automobiles	3 00	2 00	50	2 50
Beer	2 00	1 40	50	1 90
Wine	1 90	1 20	50	1 70
Whiskey	3 00	2 40	50	2 90
Bags	2 00	1 40	50	1 90
Baskets	2 00	1 10	50	1 60
Paint	2 00	1 40	50	1 90
Poultry food	1 00	80	50	1 30
Rope	2 00	1 60	50	2 10

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COMMODITY RATES—Continued.

Commodity.	Rates in effect prior to December 7, 1911 (including wharfage and handling charges), per ton of 2000 pounds.	Present rate as per order in Case No. 115, effective December 7, 1911 (including wharfage and handling charges), per ton of 2000 pounds.	Wharfage and handling charges in effect at present time per ton of 2000 pounds.	Cost to consignee if wharfage and handling is not absorbed per ton of 2000 pounds.
Soap	$2 00	$1 40	$0 50	$1 90
Soda	2 00	1 40	50	1 90
Vinegar	2 00	1 40	50	1 90
Wire — barbed	2 00	1 40	50	1 90
Emigrant moveables	2 00	1 20	50	1 70
Asphaltum	1 00	80	50	1 30
Beans and peas	2 00	1 20	50	1 70
Plaster	1 00	75	30	1 05

It will be noted that lumber, over which the principal controversy in Case No. 115 was raised, will not be affected by the discontinuance of these absorptions, but it plainly appears that as to all commodities upon which the absorption is now being made the result of granting the application of the carriers herein will be not only to nullify the effect of the Commission's decision in Case No. 115, but actually in many of the cases to bring about increases of rates over the ones that were in existence before our former adjustment. Certainly, the Commission should not permit this. If, however, the Commission is powerless under the law and the carriers have the legal right to discontinue the absorption of these wharfage and handling charges, the Commission, of course, must immediately take steps to bring about the result which it was intended should be brought about by the decision in Case No. 115.

In order to apply the law we should have before us clearly the facts surrounding the use of wharves and the handling of commodities thereon at the various seaports from and to which these rates apply. The rate for wharfage and handling is fixed by the city authorities of Los Angeles and Redondo, within which cities the wharves in question are located, usually at the rate of 50 cents per ton. This action on the part of these cities, if it be legal, establishes the *prima facie* reasonableness of this charge for the service performed.

With reference to the Southern Pacific Company the team track and shed facilities are not sufficient to handle all the traffic, but would be sufficient if lumber were excluded. (Transcript, page 34.) As far as the handling charges are concerned, there is substantially no difference in the handling of less than carload shipments on the wharf or at the stations of the various carriers. (Transcript, page 41.) With reference to the San Pedro, Los Angeles and Salt Lake Railroad, the

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team and shed facilities are not nearly adequate for all the business delivered to and picked up at the port (Transcript, page 46), and the transportation rate put in is the same regardless of the ultimate destination or point of origin of the shipment (Transcript, page 48), and as to most of the traffic the wharves are in effect a substitute for station facilities. (Transcript, pages 51 and 52.) Substantially the same conditions are found to exist with reference to station facilities on all the carriers, and the wharves are used as substitutes for station facilities for practically all business moving over them.

This absorption has been in existence for a good many years. Mr. Wann, traffic manager of the San Pedro, Los Angeles and Salt Lake Railroad Company, testified to his knowledge since 1906, and Mr. Chambers of the Santa Fe goes back even further than that. Historically, this practice grew up as follows: Certain carriers, among them the Atchison, Topeka and Santa Fe, had no line from San Francisco to Los Angeles, but they all had lines from coast points near Los Angeles to that city. It was, therefore, desirable from the standpoint of these short lines that freight from San Francisco and other points move via the water to the wharf and thence over the short line to the city of Los Angeles. In order to do this, it was necessary that the rate for this combined movement should bear a certain relation to the all-rail rate between San Francisco and Los Angeles. Hence, the water and rail carriers involved published a through rate between these points. Where the carrier owned the wharf, it took as its division a certain portion of the rate which represented wharfage and handling charges as well as the charge for the actual carriage of the traffic between the harbor and Los Angeles. After the passage of the Interstate Commerce Commission Act requiring a separation of terminal charges, the charges for wharfage and handling were set out in the tariff, but the rail carrier received the same amount for the items of wharfage and handling plus the actual transportation charge as it had theretofore received for the same service as one charge, and as a matter of fact there was no absorption at all. (Transcript, pages 68 and 69.)

The extra service which is performed in switching the cars upon the wharf and picking them up is no different than the service which would be required to be performed at a station if it were located on such wharf. In other words, if there is a difference at all between the service performed in relation to traffic passing over the wharves and that which is received or delivered at the respective line stations adjoining the wharf it merely is a service analogous to that which would be performed by delivering at a slightly more distant station and consists merely in a slightly longer haul. (Transcript, page 75.) There are

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certain other additional services, however, which are performed by these carriers that are different from those performed at stations, among which are the greater difficulty of spotting cars next to the ship-side; the necessity of maintaining a large force of men when a vessel is being loaded or unloaded, and the actual loading and unloading of carload freight. The testimony which substantiates this statement is found at various places in the transcript and the facts outlined herein are developed entirely from the testimony of the traffic managers of the various roads.

The carriers, as a matter of fact, however, contract for the handling done by certain stevedoring companies at the usual rate of 25 cents per ton, which is one half the rate fixed for the combined service of wharfage and handling by the city authorities of Los Angeles and Redondo. By this arrangement the carriers have disposed of the difficulty of keeping on hand a large force of men to load and unload ships, and it is not competent for them to urge that the fact that the work of loading and unloading is not continuous is burdensome upon them because any such burden would fall upon the stevedoring company, and the carriers, of course, cannot question the reasonableness of this charge which they voluntarily pay.

It appears from the evidence that the carriers have their team tracks and station facilities at San Pedro, Redondo and Wilmington ample to accommodate all the traffic which is originally produced or ultimately consumed at those points, but as to the greater amount of the traffic no station facilities are furnished other than the wharves, and when we recollect that the common law contract of carriage implies an agreement to receive, transport and deliver, and that for the rate received for this service the facilities necessary to perform the same must be furnished, it will appear that the carriers cannot consistently urge that by reason of the nature of the traffic they may relieve themselves of the necessity of performing a service which must be performed and furnishing facilities which must be furnished, and substitute in lieu thereof a similar service and facility and make an extra charge for the substituted service and facility which could not be made originally. The evidence very strongly impresses us with the view that there is no accessorial service performed by these carriers at these terminals which is of such consequence and character as would admit of a separate charge except the 25 cents per ton which is actually paid for the handling of carload freight, which handling would not be required on the receipt or delivery of freight at an ordinary station. It does appear, however, that as to this service the carriers have a right to compensation independent of the freight rate. A great deal of dis-

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cussion has been indulged in concerning the nature of the wharfage and handling charge — whether it is of such character as to be considered accessorial or is a transportation charge purely such as should be covered by the transportation rate. We believe any confusion that exists is the result of the practice of combining wharfage which is a service under the facts in this case which appears to us to be comprehended in the transportation service proper, with a service which is purely accessorial, such as the loading and unloading of carload freight. It must be borne in mind that the conclusion that wharfage in this case is not accessorial and handling is, is justified solely upon the facts found to exist herein. There may be, and certainly are, cases where wharfage may be accessorial and handling not, but on the facts surrounding the receipt and delivery of freight at these wharves in question we believe we are correct in deciding that the wharfage charge is a transportation charge and the handling charge not. As was pointed out by one of the attorneys, however, all transportation charges are not necessarily comprehended in the service for which the transportation rate is fixed, but it is our belief that the wharfage in this case is so comprehended. In other words, the distinction between transportation and accessorial services is not exact and these terms may be interchangeable, but when we use transportation herein we mean that service which under its contract of carriage the carrier is bound to perform, and by accessorial we mean those for which it may exact extra compensation, whether they be transportation services or not.

We do not believe that the fact that wharfage is a transportation service is at all determinative of the state or interstate character of any of the freight passing over these wharves. Of course, the carriage by vessel to or from these wharves is transportation, and of course the carriage by rail to and from these wharves is transportation. The fact that a service intervenes between these two transportation services which is also transportation does not affect, in our judgment, the character of the entire movement. Freight might remain in San Pedro for five years either after being unloaded from the vessel for rail haul or unloaded from the rail for water haul, and yet the wharfage service be exactly as it is now. Rock for a breakwater might be put upon scows to be deposited somewhere within the San Pedro harbor, and the same wharf service would certainly be performed as is performed for a shipment destined to Hongkong, and the fact that the wharf service is a transportation service would not at all alter the fact that the rail carrier accepted this shipment of rock for San Pedro, and as to such shipment is not and cannot be compelled to perform any service beyond its facilities, namely, beyond the wharf. The intervention of the trans-

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portation service proper such as the wharfage service here between two separate movements, does not, in our opinion, determine the character of the entire movement any more than the intervention of an accessorial service such as "transit privileges on wool" would determine the character of the entire movement involved. We know of no better test than the one prescribed in the *Texarkana* case (204 U. S. 403), namely, the contract of carriage for determining whether a shipment is state or interstate, and it might well be that even at these ports, in some cases at least, a part or the whole of the wharfage service would have to be considered as a part of an interstate movement, and in other cases a part or a whole of the wharfage service would have to be considered as a part of a state movement. This, we believe, is the theory upon which the Supreme Court decided the *Southern Pacific Company Terminal case* (*Southern Pacific Terminal Company* vs. *Interstate Commerce Commission*, 219 U. S. 498), and a greater part of the decision in that case is devoted to a determination that a service performed upon a wharf at Galveston is no different than any other transportation service. We believe from the circumstances of that case the court meant to hold that the wharfage service in conjunction with the water service constituted interstate commerce and was therefore subject to the jurisdiction of the Interstate Commerce Commission. We know of no other theory upon which that decision can be made consistent with the other pronouncements of the same court on analogous questions.

This Commission has heretofore expressed the opinion that no city has any jurisdiction over any purely transportation service, inasmuch as under section 22 of article XII of the Constitution that power has always been lodged in the Railroad Commission, and hence any such provision in a city charter conferring power upon the municipality would necessarily be unconstitutional, but in determining that the wharfage service we are considering here performed within these municipalities is a transportation service, we do not necessarily hold that all wharfage services are solely under the jurisdiction of this Commission. When the wharf, however, is used as we have found this one to be used, to perform a terminal service which the carrier must perform under its contract of carriage, then such service is certainly subject solely to the jurisdiction of this Commission, but this does not, as we have said, necessarily lead us to conclude that there may not be wharfage services which are not transportation services and, therefore, subject to the jurisdiction of the cities that had prior to March 23, 1912, been vested with such authority by their freeholders' charters. A similar condition would exist with reference to other services of a

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carrier which are not performed *qua carrier* but performed otherwise than as a carrier; for instance, as a warehouseman.

We think as a matter of policy that where, as in this case, there seems to be some doubt, that the Commission should in so far as possible assume that powers conferred upon a city in its charter prior to March 23, 1912, are valid powers by that city to be exercised. If any one is injured by the failure of this Commission to assume jurisdiction over the rates for wharfage and handling charges it will be the cities in question and their inhabitants, who have not as yet complained.

It is strenuously urged on the part of these carriers that under the facts stated herein they not only should not be compelled to continue these absorptions, but that the Commission in fact cannot force the continuance thereof, and they have cited many authorities in supposed support of this second contention. We have no hesitancy in saying that under all the facts we do not believe that there is any doubt but that these carriers should be compelled to continue these absorptions, and if they cannot be compelled so to do, that the rates should be revised to bring about the result intended to be accomplished by the decision in Case No. 115. Under these circumstances it only remains from the standpoint of this Commission to determine whether or not the carriers can be forced to continue these absorptions, and as bearing light upon this question of law we think a review of the decisions applicable thereto should be made.

It is strongly contended by the attorneys for the carriers that the whole service performed under the designation "wharfage and handling" is an accessorial service, and hence not covered by the freight rate, and for this reason the carriers may of right make an independent charge therefor.

We have already determined that a part of the service contemplated is properly a transportation and a part an accessorial service. As to that part of the service which is purely transportation, as we have herein defined it, there can be no question that the freight rate between the ports and Los Angeles is the measure of the compensation which may be exacted by these carriers, both for the carriage and the terminal service. As to that portion which is accessorial there is much more doubt, but the carriers rely upon the several Chicago stockyards cases, reference to which will hereafter be made, and the *St. Louis Hay and Grain Company* case (214 U. S. 297), and the *Schultz-Hansen* case (18 I. C. C., page 234). We do not consider that a review of any cases other than the Chicago stockyards cases is necessary in determining this case. In the other cases cited it was merely held that for the accessorial service the carrier had a right to make a charge, and no one

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questions this proposition. In the *Covington Stock Yard* case (139 U. S. 128) it was declared that it was incumbent upon the carriers to furnish adequate terminal facilities for live stock, and of course this doctrine is well established as to all traffic, and in general it may be said that the so-called Chicago stockyards cases likewise adhere to this doctrine.

In a very lengthy decision by Justices Lurton, Sage, and Hammond of the Circuit Court of Appeals of the Sixth Circuit (*Detroit, etc., Railway Company* vs. *Interstate Commerce Commission,* 74 Fed. 803), a review of the general conditions surrounding the practice of railroads in England and America is made, and it is shown that while in England it is the practice to break up all transportation into its component parts and impose a charge for each part, the American doctrine is different and that the American railroad rate has always been recognized as covering the full service which the carrier gives in furnishing the car, the proper place in which to load the car, conveyance of that loaded car and its terminal delivery. As stated by Commissioner Lane (18 I. C. C. 310), the English method of stating rates has never obtained in this country. Under the Interstate Commerce Act, section 6, however, and under the Public Utilities Act, section 14*a*, it is provided that all terminal, storage, icing and other charges which the Commission may require shall be stated separately. But we do not believe any one will maintain that by reason of these provisions the carrier may collect twice for the same service. In other words, the right of the carrier to state charges separately and the power of the Commission to require them to be stated separately does not produce a condition which will allow a carrier to collect more than a reasonable rate for any service, and will not relieve it of any obligation imposed by its contract of carriage.

The so-called Chicago stockyards cases have been in the courts for many years. Prior to 1894, carriers delivering to the stockyards in Chicago imposed no additional charge for such delivery, but in that year they assessed a two dollars terminal charge for the service from their lines over the tracks of the Union Stockyards Railway, the Indiana Railway and the Northern Indiana Railroad, which several belt lines serve the stockyards. The Atchison, Topeka and Santa Fé Railway Company was then in the hands of a receiver, and one, Keenan, petitioned the court to instruct the receiver of that road to deliver to the stockyards without the imposition of the two dollar charge. The Circuit Court granted the relief applied for, and held on the authority of the *Covington Stock Yards* case, *supra,* that the carrier could not lawfully divide its charge so as to separate the charge for terminal

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service from that exacted for the through service, unless the terminal service embraced some character of service not by operation of law included in the contract of carriage, and it was held that as a matter of fact the delivery to the stockyards was a service required under the contract of carriage (*Keenan et al.* vs. *Receiver of Atchison, Topeka and Santa Fe Railway Company*, 64 Fed. 992). The case was carried to the Circuit Court of Appeals, and that court (73 Fed. 755) held that as a matter of fact the service off the lines of the various carriers on to the lines of the terminal carriers was not one which the main line carriers could be forced to perform, and hence an extra charge might be imposed therefor.

Thereafter various cattle associations took the matter before the Interstate Commerce Commission, alleging both discrimination and excessive character of the terminal charge of two dollars. The Commission, on the hearing, held that the carriers were entitled to divide their rates by making one separate distinct charge for the carriage from point of shipping to Chicago and another distinct charge for the terminal service in Chicago beyond their own lines, but the Commission, while adhering to this principle, held that it was not decisive of the case since even though the right to divide the rate was fully recognized, the question remained whether the defendant carriers had in fact divided their rates, and the Commission found that "under the circumstances of the case" that the freight charge from the initial point imposed to Chicago upon shipments of live stock comprehended within its sum a reasonable charge for the terminal service to the stockyards. The Commission did allow, however, the imposition of a one-dollar charge for the service because the terminal companies had recently imposed trackage charge. The theory upon which the Commission proceeded was that inasmuch as the rate from initial points to Chicago had so long been in existence, and that for the rates charged up to 1894 the carriers had performed both the haul to the end of their lines in Chicago and the additional haul to the stockyards, that the rate which had been voluntarily imposed for the combined service was a reasonable rate for the combined service.

The defendants refused to comply with the order, and the Commission took its order into court, but the petition was dismissed by the Circuit Court (*Interstate Commerce Commission* vs. *C. B. and Q. R. Company, etc.*, 98 Fed. 173). On appeal the Circuit Court of Appeals sustained the Circuit Court (103 Fed. 249). An appeal was taken from the decision of the Circuit Court of Appeals to the Supreme Court of the United States, and that court sustained the decision of the lower court (*Interstate Commerce Commission* vs. *C. B. and Q. R.*, 186 U. S.

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320). We desire to call attention, however, to the fact, which seems to have been overlooked by the attorneys in citing this case in support of their present contention, that the Supreme Court of the United States did not hold that the Interstate Commerce Commission decided the case improperly in holding that "under the circumstances of the case" the main line haul and the terminal haul at Chicago were both paid for out of the one rate. On the contrary, the Supreme Court held that the Commission was right in such a conclusion, and it further stated that it was not passing upon "terminal services by a carrier on his own line which he was obliged to perform as a necessary incident of the contract to carry, and the performance of which was demanded of him by the shipper." But the terminal service which was there in question was one admittedly performed off the lines of the defendant carrier, and in reference thereto the court had the following to say:

> "And the reasons just given dispose of the contention that because it was found that the terminal charge of $2, abstractedly considered, would be just and reasonable, therefore it should have been held to have been just and reasonable as applied to the case in hand. This obscures the fact that compensation for the terminal service was presumptively included in the through rate existing for so many years, and therefore the $2 did not constitute the terminal rate, but that such rate after the $2 was imposed consisted of that sum plus the amount of compensation for the terminal service which had always been contained in, and which continued to be embraced in the through rate.
>
> "Under the foregoing conditions, was the imposition by the railroads of the additional charge of $2 just and reasonable, measured by the criterion which the Commission adopted, that is, 'under the circumstances of the case'? It needs no reasoning to demonstrate that the Commission correctly held that the mere imposition by the stock yards company of a new burden, averaging $1 per car, did not justify an additional charge by the carriers of $2 per car. It is likewise equally plain that if the prior rate was just and reasonable, as the Commission found it to be, that the addition, without reason, of $1 per car, caused the rate to become unjust and unreasonable to the extent of the $1 extra.
>
> "It follows that the order of the Commission was right if its correctness depends upon the considerations previously stated."

Here the Supreme Court of the United States, instead of holding that the Interstate Commerce Commission was not correct in doing just what this Commission did in Case No. 115, held directly the contrary, and even as to services admittedly to be performed beyond the end of the carrier's lines in question, which of course under the rule we are here following, were accessorial and not purely transportation

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charges. When this Commission in Case No. 115 did not make as great reduction in these rates as the evidence warranted, but gave due allowance for the absorptions which were being made, and fixed rates that were reasonable under such circumstances, it necessarily fixed rates which will be unreasonably high if the circumstances are changed and the carriers cease making absorptions that were made at the time of the original decision.

In the case before the Supreme Court which we have just been considering that court enjoined the decision of the Interstate Commerce Commission on the ground that the conditions had been changed, and that a reduction of $5 a car had recently been made from the main line rates of the carriers involved. It might be argued that the action of this Commission in reducing rates in Case No. 115 brought about an analogous change of condition, but it very readily appears that such is not the case. In reducing these rates this Commission specifically held that the rates imposed were just and reasonable rates after the reduction taking into consideration the continuation of the absorption. The Commission's order itself establishes the *prima facie* reasonableness of the rates taking into consideration the absorptions. The Interstate Commerce Commission, however, proceeded on the theory that the voluntary absorption by the carriers of the terminal rate brought about a *prima facie* case for the reasonableness of the charge for the line and terminal rate combined, and then in the same decision destroyed the effect of this presumption by pointing out that the rates had been reduced and therefore were no longer by admission of the carriers reasonable. In our case the *prima facie* reasonableness arises from the finding in the order. In the Interstate Commerce Commission case it arises from the admission of the carriers. We believe this case would be ample authority for enforcing the continuation of the absorption both of the terminal charges which are properly attributable to transportation, and those which are accessorial, if it were not for subsequent action of the court thereon.

The same stockyards case again found its way before the Interstate Commerce Commission, and again the charge of $1 was assessed, and the right to collect $2 denied; again the case went into the courts and Justices Sanborn, Hook, and Adams, proceeding under the Expediting Act, again held that the carriers had a right to collect the $2 terminal charge. When the case came before the Supreme Court of the United States, that court said:

> "For services that it (the carrier) may render or procure to be rendered off its own line, or outside the mere matter of transportation over its lines, it may charge and receive compensation. (Citing

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from *Southern R. Co.* vs. *St. Louis Hay and Grain Co.*, 214 U. S. 297.) If the terminal charge be in and of itself just and reasonable, it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. That which must be corrected and condemned is not the just and reasonable terminal charge, but those prior charges which must of themselves be unreasonable in order to make the aggregate of the charge from the point of shipment to that of delivery unreasonable and unjust. In order to avail itself of the benefit of this rule, the carrier must separately state its terminal or other special charge complained of; for, if many matters are lumped in a single charge it is impossible for either shipper or Commission to determine how much of the lump charge is for the terminal or special services. The carrier is under no obligation to charge for terminal services. Business interests may justify it in waiving any such charge, and it will be considered to have waived it unless it makes plain to both shipper and Commission that it is insisting upon it."

(*Interstate Commerce Commission* vs. *Stickney*, 215 U. S. 98–105.)

And again from the same case, page 109:

"Under those circumstances it seems impossible to avoid the conclusion that, considered of and by itself, the terminal charge of $2 a car was reasonable. If any shipper is wronged by the aggregate charge from the place of shipment to the Union Stock Yards, it would seem necessarily to follow that the wrong was done in the prior charges for transportation, and, as we have already stated, should be corrected by proper proceedings against the companies guilty of that wrong, otherwise injustice will be done. If this charge, reasonable in itself, be reduced, the Union Stock Yards Company will suffer loss while the real wrongdoers will escape. It may be that it is more convenient for the Commission to strike at the terminal charge, but the convenience of Commission or court is not the measure of justice."

On the authority of the former case before the Supreme Court, we would have no doubt that the Commission could enforce the continuation of the absorption on both transportation and accessorial charges. On the authority of this latter case we probably would be limited to requiring absorption of the charges for services which are required to be performed under the contract of carriage, although it is easy to distinguish the facts under consideration in the Chicago stockyards cases from the ones we here have presented. Admittedly the entire services for which the carriers there desired to impose the $2 charge were performed by agencies other than the carriers themselves; while

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at the ports here involved practically all the service is performed upon the lines of these carriers by the employees of such carriers or by stevedore companies under contract. But the intermingling of transportation and accessorial services, and the fact that these charges are imposed by agencies over which this Commission has no jurisdiction, namely, the city authorities of Los Angeles and Redondo, introduces such complications that we believe the ultimate solution of the difficulty will require at some time the separation of these charges. If this be necessary at some time, we had as well dispose of it now and under all the circumstances of fact and law it seems to be better for us to avoid any doubt at all in the premises by allowing the carriers to discontinue the absorption and immediately to bring the rates again in question with a view to making a further adjustment which we considered justified under the evidence presented in Case No. 115, and the effective date of such permission to cancel absorption be postponed to such a time that the Commission may be able to investigate on its own motion the rates in question with a view to having the entire adjustment take place concurrently. Of course the carriers, if they elect, may suggest proper adjustments to meet the changed conditions brought about by the discontinuance of these absorptions. It should be understood that in holding that the granting of the carriers' application herein will require a readjustment of the rates affected by this application, we are applying ourselves to the conditions as we consider them to exist. If circumstances arising since the decision in Case No. 115 have changed the status of these rates, or for any other cause we shall be of the opinion that our previous order as to the commodities here in question should be changed, we should not hesitate to make the proper adjustment on such fact appearing.

We cannot refrain from comment as to the anomalous condition which is brought about by the rule which the Supreme Court seems to have laid down here. It is held, although we think practically in the nature of dictum, "that the carrier is under no obligation to charge for terminal services." These terminal services are services which either must be paid for out of the revenues of the company, if performed by an independent agency, or performed with the company's facilities if performed by the company itself. How, then, from the standpoint of public policy, are they to be distinguished from any other charge which a carrier is entitled to make? Where will the burden fall for this generosity of the carrier if these terminal services are not to be considered in conjunction with the line haul? And if the failure to charge them be not justified on the ground that the line haul rate is sufficient of itself to furnish the carrier something beyond

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the cost of the service both for the line haul and the terminal service combined as one service, then upon what possible ground can the failure to charge for these terminal services an amount equal at least to the cost of performing the service be justified?

The Interstate Commerce Commission has uniformly held, and the Supreme Court has upheld it therein, that a carrier under no circumstances can transport merchandise at less than cost of transportation, which would bring about a deficiency which must be met from other traffic. "Clearly in such a case the engaging in such competitive traffic would bring about an unjust discrimination and disregard of the public interest since the tendency toward unreasonable rates on other business would arise from the carriage of traffic at less than cost of transportation to particular places." (*East Tennessee V. and G. R. Co.* vs. *Interstate Commerce Commission,* 181 U. S. page 1–20.) This we understand to be the law as announced by Mr. Chief Justice White, and concurred in by the entire court, still the law also seems to be as announced by Mr. Justice Brewer and concurred in also by the entire court that the carrier may waive altogether the charge which seems to bear the same relation to its business as the charge under consideration in the case to which we have just referred.

If, as a matter of fact, after these carriers have begun the absorption of terminal charges, they may thereafter discontinue such absorption at their will, and this Commission cannot prevent them from so doing, then they should not be permitted to make the absorption at all. Shippers and business men make their plans on the faith of the continuance of conditions which have voluntarily been brought about the carriers, and if after they have acted on the faith of the continuance of such conditions carriers may at their option, when it suits their purposes, change these conditions and no authority exists for preventing their so doing, it will readily appear that grave injustice may result. Each case of absorption, however, should be considered separately on its own particular facts, because where the absorption is of a charge for a service which is comprehended under the transportation service and which must be performed by the carrier under its contract of carriage there can be no doubt that the Commission can easily control; but where the absorption is of a charge for an accessorial service, or, as in the present case, is so intermixed with accessorial services that it is difficult to determine its true character, we believe public policy requires the separation of the charges and the freight rate be made reasonable in itself and the accessorial charge likewise reasonable.

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We therefore recommend the following order:

ORDER.

The Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and the Pacific Electric Railway Company having heretofore filed with this Commission application to cancel items in their tariffs which provide for the absorption of wharfage and handling charges at certain ports in the State of California; and a hearing having been held, and basing its order on the findings and conclusions in the opinion herein.

It is hereby ordered that the Southern Pacific Company is permitted to cancel Item 30–C of the reprint, third revised page 9 of Terminal Tariff 230–G, C. R. C. 1216, providing for the absorption of wharfage and handling charges at San Pedro and Newport Beach, California;

That the Atchison, Topeka and Santa Fe Railway Company is permitted to cancel Item No. 286–E, Sup. No. 16, to Santa Fe System Tariff 8117–D, C. R. C. No. 177, in its application to traffic moving through the port of Redondo Beach;

That the San Pedro, Los Angeles and Salt Lake Railroad Company is permitted to cancel Item 2–G, seventh revised page No. 3 of Terminal Tariff No. 200–D, C. R. C. No. 81, which provides for absorption of wharfage and handling charges at East San Pedro and East Wilmington on certain traffic specified in that item,

And that the Pacific Electric Railway Company is permitted to cancel Items Nos. 5–B and 6–B, carried in supplement No. 4, to Pacific Electric Railway Company's Terminal Tariff No. 2–A, C. R. C. No. 54.

And it is further ordered that this order become effective on the fifteenth day of November, 1912, and on or before which date the said companies shall file with this Commission tariffs to put this order into effect.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION No. 279.

IN THE MATTER OF THE ABSORPTION OF STORAGE CHARGES AT STOCKTON AND SACRAMENTO ON SHIPMENTS OF POTATOES, BEANS, ONIONS, ASPARAGUS AND OTHER COMMODITIES.

Case No. 258.

Decided October 14, 1912.

Applicants requested the Commission to approve the cancellation of tariff items providing for free storage and the absorption of warehouse charges in Stockton and Sacramento.

Held, That the charges herein questioned are purely accessorial and the carriers have the plain right to charge therefor.

Held, The practice of placing an item in a tariff providing for the absorption of a charge, the amount of which is uncertain and is not possible to determine until shipment is made, should be condemned.

Seth Mann, for Traffic Bureau of the Chamber of Commerce of San Francisco.

E. W. Camp, for the Santa Fe Railway Company.

C. W. Durbrow, for the Southern Pacific Company.

G. J. Bradley, for Merchants and Manufacturers' Association of Sacramento.

A. Musto, for Peter Musto Company.

F. B. Nims, for Stockton Chamber of Commerce.

J. M. Eddy, for Stockton Chamber of Commerce.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This case grows out of the practice of the Southern Pacific Company, the Western Pacific Railway Company, and the Atchison, Topeka and Santa Fe Railway Company providing for free storage at Sacramento and Stockton on potatoes, beans, onions, asparagus, and other commodities. The Southern Pacific Company and the Western Pacific Railway Company have made it a practice to store free of charge at Sacramento shipments of beans, potatoes, onions, and asparagus when originating at landings on the Sacramento and San Joaquin rivers; also to permit free storage of box shook and fruit wrapping paper when destined to landings on the Sacramento and San Joaquin rivers.

The Southern Pacific Company provides for free storage at Stockton on beans, grain, potatoes, and onions when incidental to Southern Pacific haul. The Western Pacific Railway provides for free storage of beans, grain, potatoes, onions, celery, and asparagus when incidental to West-

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ern Pacific line haul. The Atchison, Topeka and Santa Fe Railway Company provides that storage charges in warehouses on wharves on shipments of potatoes, onions, and beans will be absorbed by that company when landed by river boats and incidental to line haul of that company.

Complaint was made to the Commission by parties controlling warehouses at Stockton not located on wharves that the action of the Atchison, Topeka and Santa Fe Railway Company in absorbing warehouse charges on shipments of potatoes, onions, and beans and limiting this absorption when goods were stored in warehouses located on wharves was an unjust discrimination against warehouses which might be located near the wharves and whose charges were identical with those of the warehouses on the wharves. Likewise the San Francisco Chamber of Commerce urged that the practice of the carriers in making these absorptions at Sacramento and Stockton and not at San Francisco, worked a discrimination against the latter city. Neither the complaining Stockton warehousemen, nor the Chamber of Commerce of San Francisco, asked that these privileges be withdrawn, but urged that the same or similar privileges be extended to them. Under my view of the case, however, it is not necessary to find upon the question of discrimination either as regards warehouses at Stockton, or as regards San Francisco and Stockton and Sacramento. It appears from the evidence that these carriers have heretofore canceled these privileges on interstate business, which constitutes a considerable proportion of the entire movement.

The Commission has made a thorough investigation of this entire matter, and has called on the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company to furnish statements of the amounts absorbed at Stockton on shipments of the commodities upon which free storage was furnished, and we find that in one year the Southern Pacific Company made absorptions on 423 cars of these commodities, of which 233 were interstate and 190 intrastate. The Atchison, Topeka and Santa Fe Railway Company handled 627 cars of these commodities, of which 167 were interstate and 460 intrastate. An examination of these statements reveals a condition which it is hard to believe the traffic officials of the carriers interested would tolerate and it further indicates that they have not been in very close touch with the results of the various provisions of their tariffs, otherwise provisions of this kind would not appear in the tariffs.

We find many cars of potatoes moving from Stockton to Los Angeles upon which as high as 20 per cent of the gross revenue has been paid to warehouses for storage. We also find some shipments upon which over 40 per cent of the gross charges have been absorbed by payment of warehouse charges. It is difficult to understand how the carriers can

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justify as reasonable charges of $75 per car when out of this charge they have willingly paid a warehouse $30 for storage. We find numerous cases of cars of potatoes moving to San Francisco on which the railroads have charged a rate of $1.15 per ton, or about $17.25 per car, and have actually paid to the warehouse for storage from $13 to $16 per car. In other words, the carriers have accepted in many cases from $1.00 to $3.00 per car for transporting a car of potatoes from Stockton to San Francisco.

I find it hard to reconcile this practice of the carriers with their plea that the rates between Stockton and Sacramento and San Francisco and Los Angeles are forced and compelled rates. Here we find them voluntarily absorbing out of these so-called forced and compelled rates storage charges at Stockton which have the effect of substantially reducing the rates which they have urged are already too low. This indicates to my mind that either the plea that these rates are too low is not well founded, or the carriers do not keep a very close check upon the effect of privileges which they grant.

At the hearing some of the witnesses urged that they were appearing merely for the public good, when as a matter of fact it was plainly evident that they were appearing, as they had a perfect right to do, for purely selfish reasons. I do not think the Commission should criticise any one for attempting to appear in defense of his own business, but I do think that such appearance should be put on its proper ground.

In Case No. 253, decided to-day, we have gone into the question of accessorial and transportation charges and the rights of the carriers with reference thereto. The charges herein questioned are purely accessorial, and the carriers have the plain right to charge therefor. Furthermore, the practice of placing an item in a tariff providing for the absorption of a charge, the amount of which is uncertain and is not possible to determine until shipment is made, should be condemned. In every instance the agreement of a carrier to absorb all storage charges at Stockton is a ridiculous provision and one for which I can find no support, and which will permit a wide range of discrimination. On this ground, if none other, I would recommend the granting of the application of the carriers. I feel that these applications should be granted in justice to the carriers and in the interest of uniform treatment of shippers.

I, therefore, recommend the following order:

ORDER.

Southern Pacific Company, Western Pacific Railway Company, and the Atchison, Topeka and Santa Fe Railway Company—Coast Lines—having applied to this Commission to cancel provisions in their tariffs providing for free storage at Sacramento and Stockton and the absorp-

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tion of warehouse charges at Stockton; and a hearing having been held, and basing its order on the findings and conclusions in the opinion herein,

It is hereby ordered that the Southern Pacific Company be and it is hereby authorized to cancel Item No. 4–1–A, Item No. 57–A, Item No. 57–1–A in Southern Pacific Company Terminal Tariff C. R. C. No. 1260; and

It is further ordered that the Atchison, Topeka and Santa Fe Railway Company—Coast Lines—be and it is hereby authorized to cancel Items 273–D, 275–D, 281–D, 311–G, 296–H in Atchison, Topeka and Santa Fe Railway Company Terminal Tariff, C. R. C. 177.

It is further ordered that the Western Pacific Railway Company be and it is hereby authorized to cancel Item No. 50, Item No. 190, Item No. 205 in Western Pacific Railway Company Terminal Tariff, C. R. C. 71; and

It is further ordered that this order shall take effect and be in force from and after the 25th day of October, 1912, and before which time the carriers are ordered to present tariffs appropriate to put this order in effect.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

DECISION NO. 280.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A PASSING TRACK AT GRADE ACROSS SAN ANTONIO AVENUE, CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 259.

Decided October 14, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 10, 1912, filed with the Commission its application for permission to construct a passing track at grade across San Antonio avenue, in the city of

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Ontario, San Bernardino County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit to construct said track from the board of trustees of Ontario, San Bernardino County, California, that it is not reasonable nor practicable to avoid a grade crossing with said avenue, and that the application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct its passing track at grade across San Antonio avenue in the city of Ontario, San Bernardino County, California, on the south side and thirteen (13) feet distant from the center line of the present main track of applicant in said city, as shown by the map attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for the construction of said crossing, shall ballast same in a good and substantial manner with first-class gravel or stone ballast to a depth of not less than six (6) inches, shall construct same of a width not less than forty (40) feet, and shall otherwise prepare same for the safe and easy passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION NO. 281.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS COUNTY ROAD NO. 21, NEAR THE TOWN OF SAN PABLO, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 261.

Decided October 14, 1912.

REPORT OF THE COMMISSION.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having on October 11, 1912, filed with the Commission its application for permission to construct a spur track at grade across County Road No. 21, near the town of San Pablo, Contra Costa County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit to construct said track from the board of supervisors of Contra Costa County, California, and that it is not reasonable nor practicable to avoid a grade crossing with said county road, and that the application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted the Atchison, Topeka and Santa Fe Railway Company to construct a spur track at grade across County Road No. 21, a public highway near the town of San Pablo, Contra Costa County, California, said spur track to begin at Engineer's Station 697+12 of said railway and to extend on the east side of the main line of said railway, across said public highway and on to the private property of the Western States Porcelain Company, located on Lot 202, Rancho San Pablo, as shown by the map attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for the construction of said crossing and shall construct same of a length not less than forty-eight (48) feet with grades of approach not exceeding eight (8) per cent. Shall ballast said crossing with gravel or stone ballast not less than six (6) inches in depth, and otherwise construct same for the safe and easy passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders

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relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

DECISION No. 282.

IN THE MATTER OF THE REGULATION OF RATES FOR THE CARRYING OF FREIGHT BETWEEN THE STATIONS WITHIN THE BUSINESS DISTRICT OF THE CITY OF LOS ANGELES AND LOS ANGELES HARBOR BY THE SOUTHERN PACIFIC COMPANY AND THE SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 313.

Decided October 14, 1912.

Ordered. That the Commission on its own motion inquire into the reasonableness of certain of the rates heretofore prescribed by the Commission in its decision in Case No. 115, said case relating to the absorption of wharfage and handling charges and the decision therein of necessity resulting in certain of the rates becoming unreasonable.

REPORT OF THE COMMISSION.

Whereas on the fourth day of October, 1911, this Commission rendered its decision in Case No. 115, *Board of Harbor Commissioners of the City of Los Angeles* vs. *Southern Pacific Company* and *San Pedro, Los Angeles and Salt Lake Railroad Company*, in which decision this Commission prescribed a schedule of class and commodity rates to be put into effect by the Southern Pacific Company between Los Angeles and the harbor at San Pedro; and, in consequence of which decision the San Pedro, Los Angeles and Salt Lake Railroad Company voluntarily reduced its rates between these same points, in order to meet the schedule prescribed by this Commission in that decision; and

Whereas one of the elements considered by this Commission in determining the schedule of rates prescribed in that decision was the absorption of the wharfage and handling charges by the Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad

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Company, which fact was expressly noted in the following language used in that decision:

> "We did not make as great a reduction in these rates as we believe the evidence would justify, because of the absorptions which the carriers make. If it were not for the making of these absorptions shown in the tariffs affected, we are of the opinion that the rates ordered in by the Commission are still too high. But absorptions and all other circumstances considered, we are still of the opinion that the rates set out in the original order are reasonable rates."

Whereas this Commission, on October 14, 1912, rendered its decision in Case No. 253, by which decision the above-named carriers are permitted, after the fifteenth day of November, 1912, to cancel those items in their tariffs providing for the absorpton of wharfage and handling charges, and to make a distinct and separate handling charge; and

Whereas this Commission is of the opinion that the cancellation of those items in the tariffs of the above-mentioned carriers, providing for the absorption of wharfage and handling charges, must necessarily result in making certain of the rates heretofore prescribed by this Commission in its opinion in Case No. 115 unreasonable,

It is hereby ordered that this Commission institute on its own initiative, under the provisions of section 60 of the Public Utilities Act, an inquiry into the reasonableness of certain of the rates heretofore prescribed by this Commission, in its decision in Case No. 115 herein mentioned, to wit:

1. All class rates.
2. Commodity rates upon the following commodities:

Wheat	Butter
Corn	Cheese
Oats	Coal
Barley	Coke
Rice	Pig lead
Flour	Clay
Feed	Rock
Hay	Mineral water
Tobacco	Sugar
Potatoes	Iron—scrap
Beans	Iron—pig and bloom
Green fruit	Iron—railroad
Dried fruit	Machinery
Canned vegetables and fruit	Structural iron
Onions	Iron—bar
Vegetables	Firebrick
Cranberries	Cement
Pineapples	Lime
Bananas	Tiling
Seed	Automobiles
Malt	Beer
Coffee	Wine

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Hops	Whiskey
Nuts	Bags
Packing-house products	Baskets
Canned fish	Paint
Wool	Poultry food
Hides	Rope
Leather	Soap
Fertilizer	Soda
Wire—barbed	Vinegar
Asphaltum	Emigrant movables
Plaster	Beans and peas
Canned milk	

Be it further ordered that the Secretary of this Commission be and he is hereby instructed to notify the Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad Company to appear before this Commission on the thirty-first day of October, 1912, at 10 o'clock a.m., in the Supreme Court Rooms in the Bullard Block, in the city of Los Angeles, California, before Commissioners Eshleman and Edgerton, at which time and place said Southern Pacific Company and San Pedro, Los Angeles and Salt Lake Railroad Company may appear and be heard in the matter of the reasonableness of the rates herein mentioned.

And be it further ordered that if either said Southern Pacific Company, or San Pedro, Los Angeles and Salt Lake Railroad Company do not appear at said time and place, such company shall be guilty of contempt of this Commission, and subject to the penalties prescribed by said Public Utilities Act.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1912.

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DECISION No. 283.

IN THE MATTER OF THE PETITION OF THE METROPOLITAN WAREHOUSE COMPANY AND VARIOUS OTHER WAREHOUSES TO INCREASE THEIR RATES FOR STORING AND HANDLING COMMODITIES.

Applications Nos. 16 to 25, inclusive, No. 28 and No. 121.

Decided October 16, 1912.

REPORT OF THE COMMISSION.

ORDER EXTENDING EFFECTIVE DATE OF ORDER.

The applicants in the above entitled proceeding having filed with this Commission a petition for rehearing on this Commission's order dated October 3, 1912,

It is hereby ordered that the effective date of said order dated October 3, 1912, in so far as it affects said applications, be and the same is hereby extended to and including the ninth day of November, 1912.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of October, 1912.

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DECISION No. 284.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR AUTHORITY TO ISSUE ITS REFUNDING MORTGAGE FIFTY YEAR GOLD BONDS UNDER ITS MORTGAGE DATED SEPTEMBER 1, 1911, TO THE AMOUNT OF FIVE MILLION TWO HUNDRED AND EIGHTY-FIVE THOUSAND DOLLARS FACE VALUE.

Application No. 219.

Decided October 16, 1912.

Applicant requests permission to issue bonds in a certain amount for the purpose of refunding outstanding bonds in like amount and bearing same rate of interest. In the absence of information necessary for applicant to furnish in case it desires hereafter to issue bonds for purposes other than refunding.

Held, That the application should be granted for the reason that it strengthens applicant's finances to have the underlying bond issue on its constituent corporations paid, thereby, under this issue, creating a first mortgage on all of its property.

Guy Shoup and *Paul Shoup*, for applicant.

REPORT OF THE COMMISSION.

THELEN and EDGERTON, *Commissioners.*

Pacific Electric Railway Company petitions for an order of this Commission authorizing the issue of bonds of the face value of $5,285,000 under its mortgage dated September 1, 1911, for refunding purposes, as hereinafter specified.

Pacific Electric Railway Company was formed on or about September 1, 1911, by the consolidation of Pacific Electric Railway Company, Los Angeles Interurban Railway Company, Los Angeles and Redondo Railway Company, the Riverside and Arlington Railway Company, the San Bernardino Valley Traction Company, Redlands Central Railway Company, San Bernardino Interurban Railway Company and Los Angeles Pacific Company, and operates an extensive system of interurban railway in Los Angeles County and adjacent counties.

Applicant's total authorized capital stock, as shown by its articles of incorporation and consolidation, is one hundred million dollars, divided into one million shares of the par value of $100 each. Of the capital stock so authorized, $74,000,000 was issued to the stockholders of applicant's constituent corporations. The amount of stock outstanding in the constituent corporations at the time of the consolidation was about $57,435,700. Capital stock of the par value of $26,000,000 is now held

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in applicant's treasury and is not regarded by applicant as having been issued.

Applicant has authorized an issue of bonds in the amount of one hundred million dollars. The bonds are secured by deed of trust or mortgage from Pacific Electric Railway Company to United States Mortgage and Trust Company, dated September 1, 1911. The bonds are fifty year gold bonds and bear interest at the rate of 5 per cent per annum. Of the bonds so authorized, bonds of the face value of $20,839,000 have been issued as follows:

(*a*) $10,000,000 were issued under section 1 of article II of the refunding mortgage and were used to reimburse the applicant for moneys expended for betterments and improvements.

(*b*) $8,182,000 were issued to refund an equivalent amount of underlying bonds of Los Angeles and Redondo Railway Company and Los Angeles Interurban Railway Company.

(*c*) $2,657,000 were issued for new construction work and other work specified in section 3 of article II of the refunding mortgage.

It is now desired to issue bonds of the face value of $5,285,000 for the following purposes:

(*a*) To refund first mortgage 5 per cent bonds of Los Angeles Interurban Railway Company dated April 1, 1903	$2,537,000 00
(*b*) To refund Los Angeles and Redondo Railway Company first mortgage 5 per cent bonds dated January 15, 1902	500,000 00
(*c*) To refund Los Angeles and Redondo Railway Company first mortgage 5 per cent bonds dated October 1, 1908	2,248,000 00
Total	$5,285,000 00

It will be noted that all the bonds to be refunded bear interest at the rate of 5 per cent, and that this is also true of the bonds which it is now proposed to issue.

The Commission made inquiries into the value of applicant's property, but was unable to secure the information which it will be necessary for applicant to furnish in case it desires hereafter to issue bonds for purposes other than refunding.

From the point of view of applicant, it will be desirable that its application be granted, for the reason that it strengthens applicant's finances to have the underlying bond issues on its constituent corporations paid, so that its one hundred million dollar mortgage may become a first mortgage on all of its property. The public will not be injured in any way by the grant of the application. We find that the purposes for which the bonds for which application is made are to be used are not in whole or in part reasonably chargeable to operating expenses or to income

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and recommend that the application be granted. We submit herewith the following form of order:

ORDER.

Pacific Electric Railway Company having applied to the Railroad Commission for an order of this Commission authorizing the issue by said company of bonds in the amount of $5,285,000, face value, said bonds to be payable on the first day of September, 1961, and to bear interest at the rate of 5 per cent per annum, payable semiannually, and secured by a trust deed or mortgage upon all the property of the company, and a public hearing having been held on said application, and the Commission finding that the issue of said bonds is reasonably required by said company for the discharge or lawful refunding of its obligations and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that the Railroad Commission of the State of California hereby authorizes the issue by said Pacific Electric Railway Company of $5,285,000, face value of principal of bonds of said company, maturing the first day of September, 1961, all of the outstanding bonds of any one or more series, but not a part of any series, to be redeemable at the option of the company on the first day of September, 1916, or on any semiannual interest day thereafter, and to bear interest at the rate of 5 per cent per annum, payable semiannually, under and in pursuance of the terms of trust deed or mortgage heretofore and on the first day of September, 1911, made and executed by Pacific Electric Railway Company to United States Mortgage and Trust Company as trustee, on the following conditions and not otherwise, to wit:

1. Said bonds of Pacific Electric Railway Company, bearing numbers 23320 to 28604, inclusive, shall be exchanged by said company, bond for bond, for bonds of the following companies in amounts not to exceed the following respective amounts:

(*a*) Bonds of the face value of $2,537,000 may be exchanged for bonds of the same face value of Los Angeles Interurban Railway Company's first mortgage 5 per cent bonds, dated April 1, 1903.

(*b*) Bonds of the face value of $500,000 may be exchanged for bonds of the same face value of Los Angeles and Redondo Railway Company's first mortgage 5 per cent bonds, dated January 15, 1902.

(*c*) Bonds of the face value of $2,248,000 may be exchanged for bonds of the same face value of Los Angeles and Redondo Railway Company's first mortgage 5 per cent bonds, dated October 1, 1908.

2. Pacific Electric Railway Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the com-

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pany shall make verified reports to the Commission, stating the sale or sales or other disposition of said bonds during the previous month, the terms and conditions of sale or other disposition, the moneys realized therefrom and the use and application of said moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the 30th day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of October, 1912.

DECISION No. 285.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY TO PURCHASE AND HOLD FRANCHISES IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA, GRANTED TO JOHN H. NICHOLL BY ORDINANCES NOS. 105 AND 116 OF SAID CITY, AND ALSO TO PURCHASE A CERTAIN PIECE OF RAILWAY CONSTRUCTED BY JOHN H. NICHOLL IN THE CITY OF RICHMOND.

Application No. 224.

Decided October 16, 1912.

John H. Nicholl.
Henley C. Booth, for Southern Pacific Company.
E. H. Miller, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by Southern Pacific Company and John H. Nicholl for an order of this Commission authorizing said Southern Pacific Company to purchase from said John H. Nicholl, for the sum of three thousand ($3,000) dollars, certain franchises granted to said John H. Nicholl by Ordinances Nos. 105 and 116 of the city of Richmond, by which franchises John H. Nicholl, or his assigns, are given the right to construct a street railway upon certain streets in the city

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of Richmond, and also certain physical properties contained in that portion of the railway already constructed under the terms of these franchises by John H. Nicholl on Washington avenue, Park place and Richmond avenue, in the city of Richmond.

At the hearing, John H. Nicholl testified that the length of that portion of the railroad already constructed is approximately 1,200 feet, and that the cost thereof, including the cost of the tracks, ties and the poles, was approximately three thousand ($3,000) dollars, which is the price at which these franchises and this piece of railway are to be sold to the Southern Pacific Company, in case this application is granted.

The council of the city of Richmond notified this Commission, by letter, that it is willing that this application be granted.

The Southern Pacific Company contemplates making an electric suburban system connecting the cities of Richmond, Albany, Berkeley, Oakland, and Alameda, and the franchises and railway property, the transfer of which is the subject of this application, are needed by the Southern Pacific Company as an essential part of this suburban system.

I accordingly recommend that the application be granted, and I submit the following form of order:

ORDER.

Southern Pacific Company and John H. Nicholl having applied to this Commission for an order permitting the Southern Pacific Company to purchase from John H. Nicholl, for the sum of three thousand ($3,000) dollars, certain franchises and railway property hereinafter mentioned, and a public hearing having been duly held upon this application,

It is hereby ordered that the Southern Pacific Company be and the same is hereby authorized to purchase, and that John H. Nicholl be and he is hereby authorized to sell for the sum of three thousand ($3,000) dollars, the following franchises and railway property, to wit:

1. The franchises granted to said John H. Nicholl by Ordinances Nos. 105 and 116 of the city of Richmond, Contra Costa County, California.

2. That piece of railway constructed under the terms of these franchises by John H. Nicholl within the city of Richmond, beginning at the intersection of Railroad avenue and Washington avenue, running thence along Washington avenue to its intersection with Park place; thence along Park place to its intersection with Richmond avenue; thence along Richmond avenue to its intersection with Cutting boulevard, all within the limits of said city of Richmond.

The price which Southern Pacific Company is to pay for said property shall not be taken before this Commission, or any other public

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body, as representing, for rate fixing or any other purpose, the present fair value of said property.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of October, 1912.

DECISION NO. 286.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY TO PURCHASE AND HOLD THE FRANCHISE GRANTED TO H. C. CUTTING BY ORDINANCE NO. 259 OF THE CITY OF RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 260.

Decided October 16, 1912.

REPORT OF THE COMMISSION.

ORDER.

Southern Pacific Company and H. C. Cutting having applied to this Commission for an order authorizing the assignment and transfer by the said H. C. Cutting to said Southern Pacific Company of a certain franchise granted to H. C. Cutting, by Ordinance No. 259 of the city of Richmond, in which franchise H. C. Cutting is given the right to construct and operate a railroad upon certain streets within the limits of said city of Richmond, and the Council of the said city of Richmond having on the thirtieth day of September, 1912, passed a resolution requesting this Commission to authorize the transfer which is the subject of this application, and it appearing to this Commission that this is a case in which a public hearing is not necessary,

It is hereby ordered that the above entitled application be and the same hereby is granted.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of October, 1912.

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DECISION No. 287.

CHAMBER OF COMMERCE OF THE CITY OF SAN LEANDRO *vs.* PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 294.

Decided October 17, 1912.

Complaint alleges that respondent is discriminating against San Leandro and in favor of other communities in furnishing telephone service and charging rates therefor.

Held, That respondent should correct its discriminatory practice in the San Leandro Exchange by extending the superior service given in an adjoining territory, both as to cost and character of service, to all parts of said exchange similarly located with reference to its exchange center.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The complaint alleges that San Leandro is an incorporated municipality, and that the defendant, the Pacific Telephone and Telegraph Company, has voluntarily selected a portion of that municipality, known as the Broadmoor Tract, and has extended to it a better service and at lower rates than is being given to other portions of the municipality of San Leandro.

The complaint alleges further discrimination in that other cities and towns are given better service and lower rates than are given to San Leandro. Defendant entered a general denial as to the allegations of the complaint both as to giving two classes of service within the municipality of San Leandro, one being better than the other, and also as to discrimination in rates and service between the subscribers in San Leandro and those in other cities. The testimony, however, disclosed the fact that there are two distinct systems in use in San Leandro, one being the magneto system which is in use generally in San Leandro other than in Broadmoor Tract, the other, the common battery system which is installed and used in Broadmoor Tract, a part of San Leandro, as it is in the Oakland exchange.

The Oakland exchange, which is a very large exchange in area, extends to the line of the municipality of San Leandro. Exchange rates only are charged for service within this area, a privilege which is also extended to Broadmoor Tract and to the municipalities of Piedmont, Emeryville, Alameda, and Berkeley, which are contiguous to Oakland, and in all of this area Oakland rates apply with all the free switching privileges pertaining to those rates.

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If the residents of San Leandro living in Broadmoor Tract desire to telephone to any one in the Oakland district they can do so without toll charge. If the residents of other portions of San Leandro desire to communicate with any one in the Oakland exchange or with any one in the Broadmoor Tract they pay a toll charge in addition to the regular exchange rates.

The defendant admitted at the hearing that this was a wrong condition and that they had been endeavoring for some time to change it by discontinuing the San Leandro exchange and placing the subscribers in that exchange in an exchange located at Elmhurst, but that before they could accomplish this complainants had brought the matter before the Commission.

Defendant further maintained that if complainants' prayer was granted and San Leandro taken into the Oakland exchange, there would immediately be a demand on the part of subscribers still further away than San Leandro that they also be taken into the Oakland exchange, but the testimony shows that while the Oakland exchange, both as to limitation and population, reaches up to the San Leandro line, on the other side of the municipal limits of San Leandro there is an area of several miles before the limits of another telephone exchange are reached and that in that area there were very few, in fact I believe but one telephone user.

I find that the telephone company should correct its present discriminatory practice in the San Leandro exchange by extending the superior service now given to Broadmoor Tract, both as to cost and character of service, to all parts of said exchange similarly located with reference to its exchange center, to all subscribers who desire it.

That with reference to the matter of interexchange switching, those subscribers in San Leandro who elect to take the Oakland area service and to pay therefor at Oakland rates, are entitled to all the privileges of that service in so far as the Oakland free switching area is concerned. This does not, however, involve any change of existing toll rates which are on the basis of "exchange to exchange," and, as all of the toll rates of the State are now under consideration by this Commission and are involved in an application by the telephone company for approval of a general basic rate, existing toll rates at San Leandro (including toll rates to San Francisco) will not be disturbed in this opinion.

With reference to such subscribers in the San Leandro exchange as do not elect to take Oakland exchange area service at Oakland rates, I find that the defendant company has established a precedent which may be well followed in this case.

In Berkeley there is in effect a local service with free switching restricted to local exchange subscribers without distinction as to rates

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paid and with a 5-cent switching charge to all other Oakland exchange area subscribers. This I find should be the rate between the San Leandro local exchange and the Oakland area switching service, which includes Oakland, Piedmont, Emeryville, Alameda, and Berkeley, with free switching between San Leandro exchange subscribers regardless of what service they elect to take.

With reference to the remaining feature of the case, namely, the complaint against the system in use in San Leandro, I recognize that it would be impracticable, if not impossible, to comply with the other features of this opinion and order unless the system at present in use in San Leandro were changed. The testimony has developed that the necessities of the service extended to Broadmoor Tract required the installation of a common battery substation equipment. It further discloses that the telephone company had contemplated this equipment for the entire San Leandro exchange as a part of certain conciliatory overtures made in the course of this controversy.

I feel perfectly justified, therefore, in holding that the present magneto and power equipment of the San Leandro exchange be supplanted with central energy switch board equipment and the common battery substation equipment essential thereto. I also believe that the integrity of the San Leandro exchange should be at least theoretically maintained by the preservation of the existing numbers and retention of the San Leandro prefix. I believe that the location of the central office is a detail of practical engineering and direct management with which I have no disposition to interfere, and should be left to the telephone company.

With reference to the allegation in the complaint of insufficient facilities, the testimony showed that there was a lack of facilities in particular instances, but not more than might be incidental to the development of any telephone exchange territory, particularly when I consider the indecision which has marked the past several months due to the dispute between the telephone company and the community at San Leandro. I have no doubt but that the telephone company will speedily correct any such insufficiency, and in the event of its failing to do so, complainant can exercise its right of again calling the Commission's attention thereto.

I recommend the following order:

ORDER.

Complaint having been made by the Chamber of Commerce of the city of San Leandro, a voluntary association organized and maintained for the usual purposes of such organizations, against the Pacific Telephone and Telegraph Company, alleging that said telephone and telegraph company has maintained and is now maintaining an insufficient

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and inefficient telephone service in the municipality of San Leandro, California, and that said service is characterized by certain discriminatory practices, to wit: extending a better service to some of its subscribers than to others, the Pacific Telephone and Telegraph Company having answered, and a hearing having been duly held, and our findings herein set forth, *it is hereby ordered,*

First—That the Oakland exchange area for telephone service in its entirety (as defined by the rate sheets on file with this Commission) be extended to the telephone exchange area of San Leandro, Alameda County, California, as that area is defined by the San Leandro rate sheet on file with this Commission, including also that part of the city of San Leandro, known as Broadmoor Tract, at Oakland rates as the same are on file with this Commission for the several classes of service involved in said rates, inclusive of free switching privileges pertaining thereto.

Second—That the existing exchange service as prescribed by rate sheet on file with this Commission for the San Leandro exchange shall be maintained, and that residents in the San Leandro exchange, inclusive of Broadmoor Tract, shall have the option of the two classes of service thus maintained with free switching between subscribers to San Leandro exchange. A charge of 5 cents per switch shall be made for interexchange switching between subscribers to the local San Leandro service and subscribers to the several other exchanges of the so-called Tri-City Zone, embracing Oakland, Piedmont, Emeryville, Alameda, and Berkeley.

Third—That existing toll rates, inclusive of rates to the city of San Francisco, shall remain as they are until the further order of this Commission.

Fourth—That the Pacific Telephone and Telegraph Company shall replace the present magneto and local battery central office and substation equipment with common battery central office and substation equipment at the earliest date reasonably possible, the style, character, and detail of equipment being left to the telephone company with the proviso that adequacy shall result.

Fifth—The telephone company shall use its best judgment in the matter of maintaining San Leandro as an actual or theoretical exchange, but shall retain for San Leandro numbers the San Leandro prefix until normal telephone development based on exchange growth shall otherwise dictate.

Sixth—Nothing in this order or opinion nor in the telephonic conditions which will result in San Leandro shall be construed as a general precedent, except as I have sought to be guided by fairness in assigning certain service and grades of service to conflicting and overlapping rates

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applying in various exchanges, as it is an expansion of an existing free switching zone already alleged to be overburdened.

Seventh—This order shall become effective three (3) months from date hereof unless for good cause shown an extension of the effective date be made by subsequent order of this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of October, 1912.

DECISION NO. 288.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF THE ELECTRIC RAILROAD CORPORATIONS WITHIN THE STATE OF CALIFORNIA.

Case 314 *et seq.*

Decided October 17, 1912.

Ordering electric railroads to file statements showing cost of additions and betterments for specified period.

REPORT OF THE COMMISSION.

Whereas in pursuance of its authority and as contributing to this end, the Commission in its order of October 24, 1911, required all companies owning and operating railroads in this State to file with it copies of alignment maps, station plats, and profiles to be made in accordance with certain specifications attached to said order; and

Whereas in the making of said valuation it has become necessary that the Commission secure further facts and data relating to the physical property of the electric railroad companies of this State; now, therefore,

Be it ordered that each and every company owning and operating an electric railroad in this State shall prepare and file with this Commission at its office in the city and county of San Francisco, State of California, on or before one hundred and twenty (120) days from the date of service of this order on each of said companies, respectively, inventories and appraisals of the cost and value of their property in the State of California, upon printed blank forms, marked forms Nos. 1 to 49, inclusive, which will be furnished by this Commission with this order.

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Such inventories and appraisals shall be prepared as outlined on said forms, and also in accordance with a set of instructions approved October 17, 1912, thereto attached, marked Exhibit "A," and made a part of this order;

It is further ordered that each of said electric railroads shall prepare and file with this Commission within sixty (60) days after June 30th of each fiscal year hereafter and upon the printed blank forms herein referred to, a supplementary inventory and statement, marked "Additions," showing in the detail prescribed, the amount and actual cost of all additions and betterments which were made to road and equipment, during each fiscal year, observing the subdivisions by counties contained in paragraph 5, and other specifications contained in instructions, marked Exhibit "A," attached to this order, so far as they pertain. Also each of said companies shall, at the same time and for the same period, file a similar inventory and statement upon said printed blank forms, marked "Deductions," which shall show in detail the amount and "value" of all property which has been replaced or abandoned during each fiscal year. The "value" given shall be such "reproduction value" as was assigned to said property and approved by the Commission in the general inventory and appraisal of the property of said companies which will be filed in pursuance of this order. Said companies will have in mind in the preparation of said supplementary statements that same are to be used by this Commission for the purpose of correcting and amending the general inventories and appraisals filed in pursuance of this order, and making them as of date June 30th of each fiscal year. In carrying out the provisions of this section of this order, the said companies will observe the classification of "Expenditures for Additions and Betterments" as prescribed by the Interstate Commerce Commission for electric railroads, so far as same is applicable; and

It is further ordered that the Secretary of this Commission be and he is hereby directed to serve a copy of this order on each of said electric railroad companies, and to notify each thereof to comply with the requirements hereof.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of October, 1912.

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DECISION No. 289.

IN THE MATTER OF THE APPLICATION OF THE SNOW MOUNTAIN WATER AND POWER COMPANY FOR PERMISSION TO CHARGE RATES DIFFERENT FROM THE RATES SPECIFIED IN SCHEDULE ON FILE WITH THE COMMISSION.

Application No. 83.

Decided October 18, 1912.

Applicant asks permission to continue to charge rates for electric energy different from the rates filed with the Commission. Applicant had entered into contracts for the sale of electrical energy in wholesale quantites for distribution by other companies. The rate expert of the Commission, at the request of applicant, investigated the rates charged.

Held, That in as much as such investigation by the Rate Department was based, more or less, upon the reports and data filed by applicant and from testimony introduced at the hearing by applicant, the rate arrived at would be subject at any time to reconsideration and readjustment upon complaint or upon the Commission's initiative. The investigation having led to a reduction in rates charged by applicant to one of the distributing companies,

Held. It is the further duty of the Commission to see that the customers of said distributing company receive the benefit of the reduction.

F. D. Madison, for applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

The hearing on this application was held September 17, 1912, and the matters involved in the application were thoroughly gone into.

It appeared from the testimony that the principal business of the Snow Mountain Water and Power Company was to furnish electric energy in a wholesale way to other companies, which companies in turn distribute the energy to consumers for heat, light, power and such other purposes as electricity is used for. In this way applicant disposes of a very large per cent of its electric energy to the Pacific Gas and Electric Company. It also sells electric energy in a wholesale way to the Mount Konocti Light and Power Company, the Cloverdale Light and Power Company, and the Napa Valley Electric Company.

Applicant has contracts with all these companies entered into previous to the effective date of the Public Utilities Act, copies of which are on file with this Commission, which contracts, and the conditions under which they were made, were thoroughly explained and gone over at the hearing.

With the Pacific Gas and Electric Company, applicant has a contract entered into on the twenty-fifth day of August, 1908, for a period of

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twenty years, the terms of which are reciprocal to the extent that each company agrees to buy from or sell to the other as the necessities of each require, electric energy at .505 cents per kilowatt hour. The practical operation under this contract has been that during certain seasons of the year the Snow Mountain Water and Power Company has sold to the Pacific Gas and Electric Company a very large per cent of its output, so large that figured by the year it amounts to 73 per cent of the output of the Snow Mountain Water and Power Company.

In response to a letter from the Commission to the Snow Mountain Water and Power Company, wherein applicant was advised of the necessity of filing its rates with the Commission, an informal letter was received from the Snow Mountain Water and Power Company stating that its rates were 1 cent per kilowatt hour; subsequently, when copies of its contracts with other companies were filed, it developed that applicant was charging different rates to different customers. To the Pacific Gas and Electric Company its price was as above stated, .505 cents per kilowatt hour; to the Cloverdale Light and Power Company its price was 1 cent per kilowatt hour; to the Mount Konocti Light and Power Company, during a brief period when that company was getting started, its price was six tenths of a cent per kilowatt hour, but after May 1, 1913, the Mount Konocti Light and Power Company is to pay under the contract 1 cent per kilowatt hour. The Snow Mountain Water and Power Company also supplies the city of Ukiah, Mendocino County, California, and the Mendocino State Hospital under contract, charging each of these customers $4.00 per horse power per month, which is considered a fair rate, as under the circumstances in each case applicant is required to put in a substation at a considerable expense to reduce the current from the voltage of 55,000 volts, which its transmission line carries, to 2,300 volts, required by the city of Ukiah and the Mendocino State Hospital. As shown by the testimony, the consumers of electric energy for domestic purposes in Ukiah are now paying 10 cents per kilowatt hour where previous to this arrangement with the Snow Mountain Water and Power Company they were paying 15 cents per kilowatt hour, and that a corresponding saving has been made by the Ukiah State Hospital. These two contracts under the testimony require no further consideration in this opinion.

Coming now to the contract of the Snow Mountain Water and Power Company with the Napa Valley Electric Company, we find that a different condition exists.

On the twenty-sixth day of June, 1907, the Napa Valley Electric Company entered into a contract with the Snow Mountain Water and Power Company for a period of forty years, by the terms of which contract the Napa Valley Electric Company agreed to purchase from

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the Snow Mountain Water and Power Company electric energy on a load factor basis. Upon this basis the testimony showed that the Napa Valley Electric Company was paying considerably more than 1 cent per kilowatt hour, in fact an average of 1.81 cents, but the Snow Mountain Water and Power Company sought to justify this charge because of its having built its main line south from St. Helena through the Napa Valley to Oak Knoll, at which place the substation of the Napa Valley Electric Company is located, and also a line from Fulton just above Santa Rosa to St. Helena at an expense of $60,000, which line it had turned over to the Napa Valley Electric Company without charge, the only cost to the Napa Valley Electric Company other than the contract price for electric energy per kilowatt hour being the up-keep of the main line from St. Helena to Oak Knoll and from Fulton to St. Helena.

At first glance it would appear that there was something in this contention, but a close analysis of all the circumstances leads me to disregard the fact of applicant having built the two lines referred to as a reason for discriminating in its price for electric energy between the Napa Valley Electric Company and the Cloverdale and Mount Konocti companies.

With due regard for the interests of the Snow Mountain Water and Power Company and the Napa Valley Electric Company, there is still an important matter which merits the consideration of the Commission, and that is the interests of the public; and there seems to be no question but what the Napa Valley Electric Company can purchase electric energy to supply its consumers in the neighborhood of 1 cent per kilowatt hour, so while Mr. Beard, the president of the Napa Valley Electric Company, has not at any time asked for a change or modification of the contract which his company entered into with the Snow Mountain Water and Power Company, we nevertheless considered that it was our duty at the hearing, in the interest of the public, to consider the rates paid by the Napa Valley Electric Company to the Snow Mountain Water and Power Company. During this consideration, Mr. W. S. Graham, president of the Snow Mountain Water and Power Company, voluntarily expressed his opinion as to the granting of a less rate to the Napa Valley Electric Company as follows:

> "I would like to say further — the benefit of the Snow Mountain Water and Power Company would receive if it did make a lesser rate to the Napa Valley Electric Company, in all probability, an increase in the consumption of current in that territory. I understand there are parties there now who desire to take current from the Napa Valley Electric Company if the Napa Valley Electric Company will agree to give it to them at a lesser rate than it has offered to them up to this time. Now it might be better for all concerned, the consumer, the Napa Valley Electric Company, and

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this company, if everything considered, considering all the facts the investment there, the Napa Valley's investment there, if a lesser rate could be given them, and that is under advisement at this time and has been for just about a week."

The case was submitted upon the understanding that the opinion and order would be reserved for a short time to give the parties an opportunity to come to an amicable adjustment of the rates to be paid by the Napa Valley Electric Company.

At the request of the president of the Snow Mountain Water and Power Company, Mr. F. E. Hoar, the Commission's Expert in the Division of Electricity and Gas, assisted in the consideration of the matter of rates to be charged the Napa Valley Electric Company, but before doing so specifically stated to the Snow Mountain Water and Power Company that the participation of the Rate Expert of the Commission was at the request of applicant and that any conclusion to which he assisted in arriving at would not necessarily be binding upon the Commission; that inasmuch as the Rate Department of the Commission would base its investigation more or less upon the reports and data filed by applicant and from testimony introduced at the hearing by applicant, the rate arrived at (if approved by the Commission) would be subject at any time to reconsideration and readjustment upon complaint or upon the Commission's initiative.

The investigation by the Rate Department comprehended a careful analysis of applicant's general financial condition, total investment, income, etc. It also comprehends a segregation of investment, showing what part of the total investment is required to carry out the conditions of applicant's contract with the Pacific Gas and Electric Company and what part of the total investment is used in its contract with other customers. This segregated analysis is used as a means of arriving at a fair rate for the Napa Valley Electric Company based upon load factor as provided in the contract between the Snow Mountain Water and Power Company and the Napa Valley Electric Company, such rate varying from 1.25 cents per kilowatt hour when 16⅔ per cent of load factor is used to 1 cent per kilowatt hour when the consumption reaches 33 per cent load factor or more.

As the testimony in the hearing shows that with the addition of a few customers the Napa Valley Electric Company can easily reach 33 per cent load factor, I have no hesitation in recommending that this scale of rates worked out by the president of the Snow Mountain Water and Power Company, and our Rate Department, be approved as a fair rate for the Napa Valley Electric Company. Having arrived at this amicable reduction in rates for the Napa Valley Electric Company, it is

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in my judgment the further duty of the Commission to see that the customers of the Napa Valley Electric Company receive the benefit of this reduction.

After careful consideration of the relations of the Snow Mountain Water and Power Company with its various customers, I find upon evidence now before the Commission that the Snow Mountain Water and Power Company should be authorized to continue deviation as prayed for in this application with the following customers, to wit: The Pacific Gas and Electric Company, The Mount Konocti Light and Power Company, the Cloverdale Light and Power Company, the city of Ukiah, California, and the Mendocino State Hospital. That as to the scale of prices to be charged by the Snow Mountain Water and Power Company for electric energy to the Napa Valley Electric Company, such scale as arranged by the president of the Snow Mountain Water and Power Company and the Rate Department of the Commission shall be put into effect.

I recommend the following order:

ORDER.

Whereas the Snow Mountain Water and Power Company has applied to this Commission to continue to charge rates for electric energy different from the rates filed with this Commission; and

Whereas the reasons for such deviation from the rates filed with the Commission have been carefully analyzed and considered, and an amicable adjustment arrived at as to the rates to be charged to the Napa Valley Electric Company, reducing said rate from 1.81 cents to 1.25 cents maximum and 1 cent minimum per kilowatt hour; and the Commission finding upon the evidence before it that the Snow Mountain Water and Power Company should be authorized to continue such deviations with respect to the Pacific Gas and Electric Company, the Mount Konocti Light and Power Company, the Cloverdale Light and Power Company, the city of Ukiah, California, and the Mendocino State Hospital,

It is hereby ordered that the said Snow Mountain Water and Power Company be and it is hereby authorized to continue such deviations.

With respect to the rates to be charged by the Snow Mountain Water and Power Company and the Napa Valley Electric Company,

It is hereby ordered that the Snow Mountain Water and Power Company be and it is hereby authorized to put into effect and charge the Napa Valley Electric Company the scale of rates agreed upon by the president of the Snow Mountain Water and Power Company, assisted by the Rate Department of this Commission, such assistance having been

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requested by the Snow Mountain Water and Power Company and accepted as in no way binding upon the Commission, to wit:

Up to and including 16½	per cent load factor	1.25	cents per kilowatt hour.
Up to and including 17	per cent load factor	1.24	cents per kilowatt hour.
Up to and including 18	per cent load factor	1.22	cents per kilowatt hour.
Up to and including 19	per cent load factor	1.20	cents per kilowatt hour.
Up to and including 20	per cent load factor	1.18	cents per kilowatt hour.
Up to and including 21	per cent load factor	1.16	cents per kilowatt hour.
Up to and including 22	per cent load factor	1.145	cents per kilowatt hour.
Up to and including 23	per cent load factor	1.130	cents per kilowatt hour.
Up to and including 24	per cent load factor	1.115	cents per kilowatt hour.
Up to and including 25	per cent load factor	1.100	cents per kilowatt hour.
Up to and including 26	per cent load factor	1.0875	cents per kilowatt hour.
Up to and including 27	per cent load factor	1.075	cents per kilowatt hour.
Up to and including 28	per cent load factor	1.0625	cents per kilowatt hour.
Up to and including 29	per cent load factor	1.05	cents per kilowatt hour.
Up to and including 30	per cent load factor	1.0375	cents per kilowatt hour.
Up to and including 31	per cent load factor	1.025	cents per kilowatt hour.
Up to and including 32	per cent load factor	1.0125	cents per kilowatt hour.
Up to and including 33	per cent and over 1 cent per kilowatt hour.		

That the attention of the Napa Valley Electric Company be directed to the necessity of immediately giving to its consumers the benefit of this reduction and thereby endeavoring to increase its consumption so that it may receive the lowest rate agreed upon in the above schedule.

That if this suggestion is not acted upon by the Napa Valley Electric Company, the Commission of its own initiative will call into question the rates of the Napa Valley Electric Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of October, 1912.

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DECISION NO. 290.

IN THE MATTER OF THE APPLICATION OF PEOPLE'S WATER COMPANY FOR AN ORDER AUTHORIZING ISSUE OF NOTES AND ISSUE AND PLEDGE OF BONDS AS COLLATERAL SECURITY THEREFOR.

Application No. 129.

Decided October 18, 1912.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

This Commission having heretofore, on July 20, 1912, made an order in the above proceeding authorizing People's Water Company to issue promissory notes to the aggregate amount of five hundred thousand ($500,000) dollars, and to issue and pledge as security for the payment of these promissory notes People's Water Company general mortgage, five per cent, thirty year, gold bonds to the aggregate amount of one millon five hundred thousand ($1,500,000) dollars, upon certain conditions specified in said order, one of which conditions was that the authority therein granted should apply only to notes and bonds issued by People's Water Company on or before the thirtieth day of October, 1912; and

People's Water Company having on October 11, 1912, filed with this Commission a supplemental application for a ninety-day extension of the time limit placed upon the authority granted in said order; and

This Commission being of the opinion that this is not a case in which a public hearing is necessary, and also that there is no objection to the granting of this supplemental application,

It is hereby ordered that the time limit placed upon the authority granted in the order heretofore made in the above entitled proceeding on July 20, 1912, be and the same is hereby extended from the thirtieth day of October, 1912, to and including the twenty-eighth day of January, 1913.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of October, 1912.

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DECISION No. 291.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA, FOR AN ORDER PRESCRIBING THE MANNER, PLACE AND TERMS OF INSTALLATION OF THE CROSSING OF A PUBLIC HIGHWAY ABOVE THE TRACK OF SOUTHERN PACIFIC COMPANY NEAR PEYTON, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 198.

Decided October 21, 1912.

A. B. McKenzie, district attorney, for Contra Costa County.
H. C. Booth, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On August 21, 1912, the board of supervisors of Contra Costa County, California, filed with the Commission an application for an order determining and prescribing the kind, manner, place, and terms of installing an overhead public highway crossing above the track of Southern Pacific Company near the town of Peyton, Contra Costa County, California. At a hearing had upon the application on September 5, 1912, at Martinez, California, it was decided that parties to the proposed crossing would, after further investigation by their engineers, endeavor to enter into an agreement with regard to the location, construction, and division of expense of installing and maintaining the bridge for the overhead crossing, which agreement would be submitted for the approval of the Commission.

On October 16, 1912, copy of plans and specifications for a steel overhead bridge was filed with the Commission, together with a copy of a resolution of the board of supervisors of Contra Costa County, California, approving the proposal of Southern Pacific Company to bear one half ($\frac{1}{2}$) of the expense of constructing and installing the overhead crossing at the proposed point of intersection of the highway with its line of railroad, the county of Contra Costa to hereafter bear the expense of maintaining the crossing.

The agreement together with the plans and specifications for the overhead bridge appear to be satisfactory, and I recommend that the application be granted and submit herewith the following form of order:

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ORDER.

Board of supervisors of Contra Costa County, California, having on August 21, 1912, filed with the Commission an application for an order authorizing the construction of a public highway crossing above the track of Southern Pacific Company near Peyton, Contra Costa County, California, and prescribing the kind, manner, place, and terms of installing an overhead bridge over said track, and a hearing having been held upon the application, at which all parties were duly represented; and a copy of the resolution adopted by the board of supervisors of Contra Costa County having been filed with the Commission approving an agreement entered into with the Southern Pacific Company relative to the cost of installing and hereafter maintaining a bridge over the track of Southern Pacific Company at the proposed point of crossing, and plans and specifications for said proposed bridge having been filed with the Commission; and it further appearing that the manner, place and terms of installing the proposed crossing together with the overhead bridge are satisfactory and should be approved by the Commission.

It is hereby ordered that permission be hereby granted the board of supervisors of Contra Costa County, California, to construct a public highway above the track of Southern Pacific Company near Peyton, Contra Costa County, California, as shown by the map and profile attached to the application, subject to the following conditions, viz:

(1) The expense of constructing the overhead bridge in accordance with the plans and specifications for same which have been filed with the Commission shall be divided equally between the parties as provided in an agreement with Southern Pacific Company entered into and adopted by said board of supervisors on October 7, 1912, and the expense of maintaining said bridge shall be borne by Contra Costa County, as provided in said agreement.

(2) The overhead bridge shall be constructed so that at all times a clearance above the rails shall not be less than twenty-two (22) feet.

(3) The county of Contra Costa shall hereafter maintain said overhead bridge together with approaches thereto in good and first-class condition for the safe and convenient use of the public.

(4) The Commission reserves the right hereafter to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, public convenience and necessity demand.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

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DECISION No. 292.

IN THE MATTER OF THE APPLICATION OF FRESNO TRACTION COMPANY FOR PERMISSION TO CONSTRUCT A DOUBLE TRACK LINE OF ELECTRIC RAILROAD OVER THE TRACK OF SOUTHERN PACIFIC COMPANY AT ROEDING PARK, NEAR THE CITY OF FRESNO, FRESNO COUNTY, CALIFORNIA.

Application No. 225.

Decided October 21, 1912.

REPORT OF THE COMMISSION.

Fresno Traction Company, a corporation, having on September 16, 1912, filed with the Commission its application for permission to construct a double track line of electric railroad over the single main line track of Southern Pacific Company at Roeding Park, near the city of Fresno, Fresno County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific Company has agreed to a grade crossing of its single track steam railroad with said double track electric railroad as shown by the agreement made and entered into by the parties thereto, of date March 15, 1912, a copy of which has been filed with the Commission; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at said proposed crossings and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Fresno Traction Company to construct its double track main line at grade across the single track of Southern Pacific Company at a point about two (2) miles northwest of the Southern Pacific Company's Fresno city depot near Roeding Park and also near the intersection of Olive avenue in said county of Fresno with the track of Southern Pacific Company, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The expense of constructing the crossings, together with the cost of their maintenance hereafter in good and safe condition, shall be borne by the applicant.

(2) All overhead wires or obstructions constructed at the crossings shall have a clearance above the rails of Southern Pacific Company of not less than twenty-two (22) feet.

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(3) No train, motor or car owned and operated by applicant shall be permitted to pass over the crossings without first coming to a full stop within fifty (50) feet thereof and until one (1) of the crew or other employee of applicant shall have first gone upon the crossings and ascertained that no engine, train or car of Southern Pacific Company was approaching the crossings from either direction. Should no such engine, train or car be approaching, then the said member of the crew or other employee may signal and permit his train, motor or car to proceed over the crossings. The Southern Pacific Company may operate its engines, trains, or cars over the crossings without stopping, provided that proper signal is given by whistle and bell within sufficient distance before reaching the crossings to advise the employees of Fresno Traction Company of such approach.

(4) Should applicant or Southern Pacific Company hereafter construct an interlocking device for the protection of said crossings either upon their own motion or in pursuance of an order of the Commission, said device shall be constructed in accordance with plans satisfactory to the Commission; it shall be operated under such rules and regulations as the Commission may issue or approve governing in such matters.

(5) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

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DECISION No. 293.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF SUPERVISORS OF LOS ANGELES COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT A PUBLIC HIGHWAY AT GRADE ACROSS THE TRACK OF SOUTHERN PACIFIC COMPANY AT CORTEEN PLACE, BETWEEN GARNSEY AND LANKERSHIM, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 255.

Decided October 21, 1912.

REPORT OF THE COMMISSION.

The board of supervisors of Los Angeles County, California, having on August 7, 1912, filed with the Commission its application for permission to construct a public highway at grade across the track of Southern Pacific Company at Corteen place, between Garnsey and Lankershim, Los Angeles County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured an easement from Southern Pacific Company authorizing the construction and maintenance of a grade crossing with its track on said public highway, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said track and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted the board of supervisors of Los Angeles County, California, to construct a public highway at grade across the track of Southern Pacific Company at Corteen place, between Garnsey and Lankershim, Los Angeles County, California, at engineer's station 273+43 of said company, as shown by the map attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, including such culverts as may be necessary on each side of the track of Southern Pacific Company shall be borne by applicant.

(2) The expense of maintaining the approaches to the crossing, including culverts, if any, to within two (2) feet on each side of the rails of Southern Pacific Company, in good and first-class condition for the safe and convenient use of the public shall be borne by applicant. Southern Pacific Company shall maintain in good and safe condition the crossing over its track, including the necessary plank or guardrails

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and broken stone or gravel ballast not less than six (6) inches deep for a distance of two (2) feet on each side of its rails.

(3) The crossing shall be constructed of a width not less than twenty-four (24) feet and with grades of approach not exceeding eight (8) per cent.

(4) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

DECISION NO. 294.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF SUPERVISORS OF LOS ANGELES COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT PUBLIC HIGHWAYS AT GRADE ACROSS THE TRACK OF THE SOUTHERN PACIFIC COMPANY AT PEYTON AND MARIA AVENUES BETWEEN RAYMER AND HEWITT, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 256.

Decided October 21, 1912.

REPORT OF THE COMMISSION.

The board of supervisors of Los Angeles County, California, having on October 7, 1912, filed with the Commission its application for permission to construct public highways at grade across the track of Southern Pacific Company on Peyton and Maria avenues, between Raymer and Hewitt, Los Angeles County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific Company has executed an easement to said county granting the right to construct said highway crossings at grade, and it further appearing that it is not reasonable nor practicable to avoid grade crossings of said public highways with said track, and that the application should be granted subject to the conditions hereinafter specified,

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It is hereby ordered that permission be hereby granted the board of supervisors of Los Angeles County, California, to construct public highways at grade across the track of Southern Pacific Company at Peyton and Maria avenues, between Raymer and Hewitt, Los Angeles County, California, being at engineers' stations 552 and 611+90 of said track, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossings, including such culverts as may be necessary on each side of the track of Southern Pacific Company, shall be borne by applicant.

(2) The expense of maintaining the approaches to the crossings, including culverts, if any, to within two (2) feet on each side of the rails of Southern Pacific Company, in good and first-class condition for the safe and convenient use of the public shall be borne by applicant. Southern Pacific Company shall maintain in good and safe condition the crossings over its track, including the necessary plank or guardrails and broken stone or gravel ballast not less than six (6) inches deep for a distance of two (2) feet on each side of its rails.

(3) The crossings shall be constructed of a width not less than twenty-four (24) feet and with grades of approach not exceeding eight (8) per cent.

(4) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

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DECISION No. 295.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT ITS PASSING TRACK AT GRADE ACROSS HERMOSA AND HONOLULU STREETS IN THE CITY OF LINDSAY, TULARE COUNTY, CALIFORNIA.

Application No. 263.

Decided October 21, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 17, 1912, filed with the Commission its application for permission to construct a passing track at grade across Hermosa street in the city of Lindsay, Tulare County, California, and also a drill track at grade across Hermosa and Honolulu streets of said city, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary permit or franchise from the board of trustees of the city of Lindsay, for the construction of said tracks at grade across said streets; and it further appearing that it is not reasonable nor practicable to avoid grade crossings of said tracks with said street and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a passing track at grade across Hermosa street and a drill track at grade across Hermosa and Honolulu streets, all in the city of Lindsay, Tulare County, California, said crossings lying between Sweet Brier avenue and Mt. Vernon avenue of said city, as shown by the map attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings together with the cost of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Said crossings shall be constructed of a width not less than forty-eight (48) feet with grades of approach not exceeding six (6) per cent. Applicant shall provide the necessary plank or guardrails for the construction of the crossings and shall ballast same with not less than six (6) inches of first-class broken stone or gravel ballast and shall in every way make said crossings safe for the passage of vehicles and other road traffic.

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(3) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

DECISION NO. 296.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A DRILL TRACK AT GRADE ACROSS OLIVE AVENUE IN THE CITY OF PORTERVILLE, TULARE COUNTY, CALIFORNIA.

Application No. 265.

Decided October 21, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 18, 1912, filed with the Commission its application for permission to construct a drill track at grade across Olive avenue in the city of Porterville, Tulare County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit from the board of trustees of the city of Porterville for the construction of said drill track at grade; and it further appearing to the Commission that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing with Olive avenue, and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a drill track at grade across Olive avenue in the city of Porterville, Tulare County, California, between "D" street and "E" street, as shown by the map attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing said crossing together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

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(2) Applicant shall provide the necessary guardrails or plank for the construction of said crossing and shall ballast same with first-class gravel or broken stone to a depth of not less than six (6) inches. Said crossing shall be constructed of an effective width of not less than forty-eight (48) feet.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

DECISION No. 297.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS A PUBLIC HIGHWAY AT RUSS, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 266.

Decided October 21, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on October 18, 1912, filed with the Commission its application for permission to construct a spur track at grade across a public highway as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that it is not reasonable nor practicable to avoid a grade crossing at the proposed point of crossing with said public highway, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a spur track at grade across Soledad Canyon Road, a public highway, at its proposed station Russ, Los Angeles County, California, said crossing to be at engineer's station 18079+02 of said company, as shown by the map attached to the application, and subject to the following conditions, viz:

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(1) The entire expense of constructing the crossing together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary guardrails or plank for the construction of said crossing and shall ballast same with gravel or broken stone to depth of not less than six (6) inches. Said crossing shall be of a length of not less than twenty-four (24) feet with grades of approach not exceeding eight (8) per cent.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

DECISION No. 298.

CITY OF PASADENA (A MUNICIPAL CORPORATION)
vs.
SOUTHERN CALIFORNIA EDISON COMPANY.

Application No. 290.

Decided October 21, 1912.

Held, The Commission has no jurisdiction over discriminations in electric lighting rates charged within different municipalities which have not surrendered to the Commission their power over public utilities.

REPORT OF THE COMMISSION.

ESHLEMAN, THELEN, and EDGERTON, *Commissioners.*

On July 27th the complainant filed its complaint alleging that the defendant was discriminating against the complainant by furnishing light within the city of Pasadena at a rate lower than reasonable, thereby injuring the city of Pasadena as the proprietor of the municipal lighting plant. The complaint sets out that this discrimination is brought about primarily by the charging of rates within the city of Pasadena too low to pay operating expenses, which practice requires the city of Pasadena to lose money on its municipal lighting enterprise or charge rates higher than the defendant charges in said city. It is alleged that the defendant

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is able to accord to its patrons within the city of Pasadena these very low rates by reason of its excessive and exorbitant rates charged in other cities and unincorporated territory.

The relief asked is that the Commission "determine whether or not the defendant has established or is maintaining any unreasonable difference as to rates and charges between the city of Pasadena and incorporated cities other than the said city of Pasadena, and unincorporated territory as provided in the Public Utilities Act hereinbefore referred to, and particularly as provided in section 19 of said act, and if said Commission determines that such unreasonable difference as to rates and charges exists that by general order it forbid said defendant from continuing such unreasonable difference, and for such other relief as may be just in the premises."

The defendant on July 31st filed its objections to said complaint, as allowed by the rules of this Commission, and asked for a hearing thereon. The main point raised by defendant is that this Commission has no jurisdiction over rates within the city of Pasadena, and therefore could not cure the discrimination complained of, even though it exists, by taking any action with reference to the rates of defendant within said city of Pasadena.

The hearing was held as requested and extensive briefs have been filed, and very interesting points raised by attorneys for the parties which we do not find it necessary to decide in disposing of these objections.

It is admitted that under the provisions of the Public Utilities Act this Commission has jurisdiction over the rates of the defendant corporation in unincorporated territory. It is equally plain that the city of Pasadena under the provisions of the Public Utilities Act would have the right to complain if it so desired of the unreasonable character of such rates independent of their discriminatory character.

Therefore, it will be easy for this Commission acting within its admitted jurisdiction to dispose of a great portion of this controversy if the complaint be so amended that the unreasonable character of rates of defendant corporation within unincorporated territory be brought in issue, and we are of the opinion that such is the better course to pursue in the present controversy. Hence, we will sustain the objections to the complaint interposed by the defendant with leave to the complainant to amend in accordance with the suggestion outlined herein, and if such amendment be not made within twenty days from date the complaint will be dismissed. If such amendment be made the defendant will be required to answer the said amended complaint.

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We submit the following form of order:

ORDER.

It is hereby ordered that the objections of defendant to the complaint herein be and the same are hereby sustained, with leave to the complainant to amend within twenty days.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of October, 1912.

DECISION No. 299.

IN THE MATTER OF THE APPLICATION OF THE SUTTER BUTTE CANAL COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE AND DELIVER CERTAIN OF ITS BONDS AND RATIFYING AND APPROVING CERTAIN ACTS AND THINGS ON THE PART OF SAID CORPORATION HERETOFORE DONE AND PERFORMED.

Application No. 239.

Decided October 23, 1912.

Delivery of applicant's bonds to trustee for the purpose of securing payment of underlying bonds *held* not to be an "issue" as that word is used in section 52 of the Public Utilities Act.

The substitution of a six per cent bond for a five per cent bond permitted, the substitution having been contracted for long prior to the enactment of the Public Utilities Act, and for the reason that applicant's financial condition will be improved by removing the underlying bonds.

Determination of applicant's right to deliver water free to the Bureau of Plant Industry of the United States Government held in abeyance pending decision in Case No. 293, which decision will relate to the right of public utilities to deviate from their published schedule of rates.

Applicant permitted to issue unsecured promissory notes in lieu of outstanding certificates of indebtedness purporting to be a first lien.

Henry Ingram and Willard M. Sheldon, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Sutter Butte Canal Company was incorporated under the laws of California, in January, 1911, for the purpose primarily of maintaining and operating irrigating ditches and appurtenances and of supplying

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water therefrom. In January, 1911, the company bought the Butte County Canal Company, which had been engaged in similar business in Butte County since 1903. The Sutter Butte Canal Company also bought the property of the Sacramento Valley Farms Company, which owned certain lands and contracts for the sale of lands in Butte and Sutter counties. The Sutter Butte Canal Company owns some 48.86 miles of main canal in Butte and Sutter counties and about 150 miles of laterals and service ditches, and its property is alleged to have a value in excess of one million dollars.

Applicant's total authorized capital stock consists of $1,250,000, divided into 12,500 shares of the par value of $100 each. Of the amount so authorized, $1,018,600, par value, was issued to the Butte County Canal Company in return for its property and $231,400, par value, was issued to Sacramento Valley Farms Company in return for the property of that company.

On March 1, 1911, Sutter Butte Canal Company executed its deed of trust or mortgage to First Federal Trust Company, conveying all its property to secure a maximum issue of bonds of the face value of $500,000, consisting of 500 bonds of the face value of $1,000 each, the bonds to be payable on March 1, 1931, and to bear interest at the rate of six per cent per annum. Of the bonds so authorized, 371 bonds, having a face value of $371,000, have been issued and are now outstanding.

On September 25, 1912, applicant filed its petition, asking for an order of this Commission to issue the remaining bonds of the face value of $129,000, and for certain additional relief. At the hearing it appeared that applicant intends to raise a portion of its necessary funds from an assessment to be levied on the stockholders and that it now desires this Commission's authority to issue only $52,000 of bonds. It appeared also that applicant desires this Commission's permission to issue certain notes to take up outstanding notes of the Sacramento Valley Farms Company assumed by applicant. Applicant accordingly was directed to file a supplemental application, stating the precise relief which it desires from this Commission. The supplemental application was filed on October 22, 1912, and the application is now ready for decision.

In the supplemental petition applicant asks for an order of this Commission as follows:

(*a*) Ratifying and approving the action of applicant in delivering to one Herman Hermansen as trustee, its bonds of the face value of $52,000, for the purpose of securing and retiring a face value of $52,500 of the bonds of Butte County Canal Company, with permission to sell and dispose of the same at par for said purpose.

(*b*) Ratifying and approving the donation by applicant of certain

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money and the use of certain land, water and water rights to the Bureau of Plant Industry of the United States Government.

(*c*) Authorizing and empowering applicant to make, issue and deliver to the holders of certificates of indebtedness of Sacramento Valley Farms Company its promissory notes in the aggregate amount of $197,000.

The $52,500, face value, of bonds of Butte County Canal Company which applicant desires to refund are the remaining bonds outstanding of an issue of applicant's predecessor. These bonds bear interest at the rate of five per cent per annum. At the time applicant bought the property of Butte County Canal Company, it undertook to retire the latter company's bonds by issuing its own six per cent bonds, bond for bond. On March 13, 1912, applicant delivered to Herman Hermansen, as trustee, for the purpose of securing payment of these bonds of the Butte County Canal Company, applicant's own bonds of the face value of $52,000. The delivery of these bonds under these circumstances is not an "issue" as that word is used in section 52 of the Public Utilities Act. It accordingly becomes necessary to secure this Commission's authorization for the issue of these bonds. While ordinarily the Commission would be very slow to permit the substitution of a six per cent bond for a five per cent bond, the substitution in this case was contracted for long prior to the enactment of the Public Utilities Act. Applicant is simply asking for authority to carry out the provisions of its contract, and in view of this fact and of the further fact that applicant's financial condition will be improved by removing the underlying bonds of the Butte County Canal Company, I recommend that this portion of the application be granted. Applicant should have authority either to exchange the bonds of this authorization for those of the Butte County Canal Company, bond for bond, or to sell its bonds at not less than par and to use the proceeds for the purchase of the outstanding bonds of the Butte County Canal Company at a sum not more than par.

Applicant further asks for an order ratifying and approving certain acts in connection with the establishment of an experimental station for the improvement of rice and other cereals in Butte County. Subsequent to March 23, 1912, applicant conveyed in trust to Sacramento Valley Grain Association, a corporation, for a period of forty years, the use of 56.46 acres of land in Richvale Colony No. 10, in Butte County, for the purpose of transferring or leasing the same to the Bureau of Plant Industry of the United States Government as an experimental station for the improvement of rice and other cereals, said lands being of the par value of $2,911.46. Applicant also donated a water right calling for the annual delivery of water to the land, said to have a value of $564.60, and donated cash in the amount of $2,001 and agreed to waive all water delivery charges during the entire period of the lease

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of the land by the United States Government. It developed at the hearing that the land so conveyed in trust to the Sacramento Valley Grain Association is not land which was "necessary or useful" in the performance of the duties of Sutter Butte Canal Company to the public. Accordingly, under the provisions of section 51*a* of the Public Utilities Act, this Commission's authorization is not necessary as to this item. Nor is it necessary under the facts in this proceeding to secure this Commission's permission with reference to the donation in cash and the donation of the water right. In this connection, applicant finally asks this Commission's authority to deliver water free to the Bureau of Plant Industry of the United States Government in connection with said experimental station. Section 19 of the Public Utilities Act provides in part that no public utility shall as to rates, charges, service, facilities or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. Furnishing water free to one person or corporation while a charge is made to another person or corporation is, of course, the grant of a preference or advantage. Section 17*b* of the same act provides that the Commission may by rule or order establish such exceptions from the inhibition against charging any compensation greater or less or different than that specified in the tariffs on file as the Commission may consider just and reasonable as to each public utility. The Commission in Case No. 293 is now considering the entire question of the classes of cases, if any, in which it will authorize the different public utilities of the State to deviate from their published schedules of rates. I recommend that no order be made at this time with reference to this portion of the application, but that the matter be held in abeyance until the Commission reaches its decision in Case No. 293. In the meantime applicant is protected by this Commission's General Order No. 15, providing that the utilities may continue to charge such lesser rates, tolls, rentals, and charges as they were theretofore charging until the decision of the Commission on the applications for permission to deviate from schedule rates.

Applicant finally asks for an order authorizing and empowering it to make, issue and deliver to the holders of the certificates of indebtedness of Sacramento Valley Farms Company in the amount of $197,000, its promissory notes in the same amount, to bear interest at the rate of six per cent per annum, and to contain a clause giving to the maker thereof the option to cumulate the interest up to the time of maturity of the principal sum, which is to be five years from the date of the notes. On November 11, 1911, applicant purchased from Sacramento Valley Farms Company all its assets and property, consisting principally of lands, notes on the sale of lands and water rights in connection with applicant's

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operations in Butte and Sutter counties, and assumed all the liabilities of the vendor. Among these liabilities were certificates of indebtedness in the amount of $197,000, bearing interest at the rate of six per cent per annum, theretofore issued by Sacramento Valley Farms Company for and on account of moneys advanced and paid to said company. Under the terms of said certificates they were to be a first lien upon all the property of Sacramento Valley Farms Company, but notwithstanding said recital, no specific lien has been created or exists for the payment of said certificates of indebtedness and the holders of the certificates now demand either that such lien be created or that applicant issue its unsecured promissory notes, bearing interest at the rate of six per cent in lieu thereof. It will obviously be of advantage to the applicant to issue its promissory notes, unsecured, in lieu of these outstanding certificates of indebtedness and the rate of interest will remain the same, and an unsecured obligation will take the place of an obligation which purported to be a lien on the property. I accordingly recommend that this portion of the application be granted.

I find that the purposes for which applicant intends to issue said bonds and said promissory notes are not in whole or in part reasonably chargeable to operating expenses or to income, and submit herewith the following form of order:

ORDER.

Sutter Butte Canal Company having applied to the Railroad Commission of the State of California for an order authorizing the issue by said company of bonds to the amount of $52,000, face value, said bonds to be payable on the first day of March, 1931, and to bear interest at six per cent per annum, payable semiannually, and secured by a trust deed or mortgage upon all the property of applicant, and also for an order authorizing the issue of its five-year promissory notes, to bear interest at a rate not in excess of six per cent per annum, all for the purposes hereinafter specified, and also for an order ratifying and approving the donation by applicant of certain money and use of land, water and water rights to the Bureau of Plant Industry of the United States Government, and a public hearing having been held upon said application and it appearing to the Commission that the purposes for which it is desired to issue said bonds and said notes are not in whole or in part reasonably chargeable to operating expenses or to income.

It is hereby ordered as follows:

1. The Railroad Commission hereby authorizes the issue by Sutter Butte Canal Company of $52,000, face value of principal of bonds of said company, bearing numbers 372 to 423, inclusive, maturing the first day of March, 1931, to bear interest at the rate of six per cent per annum, payable semiannually, under and in pursuance of the terms of

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the trust deed or mortgage heretofore and on the first day of March, 1911, made and executed by said Sutter Butte Canal Company to First Federal Trust Company, as trustee, on the following conditions and not otherwise, to wit:

(*a*) Sutter Butte Canal Company shall have the right to exchange said bonds, bond for bond, for bonds up to an equivalent face value of Butte County Canal Company or to sell its said bonds hereby authorized so as to net applicant not less than one hundred per cent of the par value of the principal thereof, besides interest accruing thereon, and to use the proceeds only for the purpose of retiring said bonds of Butte County Canal Company.

2. Sutter Butte Canal Company is hereby authorized to issue its promissory note or notes in an aggregate amount not exceeding the sum of $197,000, said note or notes to bear interest at a rate not to exceed six per cent per annum and to contain a provision giving to the maker the option to cumulate the interest thereunder up to the time of the maturity of the principal sum, said note or notes to be substantially in the form set forth in the supplemental application herein, on the following conditions and not otherwise, to wit:

(*a*) Said promissory notes shall be issued so as to net the Sutter Butte Canal Company not less than par and they shall be issued only in exchange for outstanding certificates of indebtedness of Sacramento Valley Farms Company in a total amount not to exceed the sum of $197,000.

3. Sutter Butte Canal Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds and notes hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, stating the sale or sales of said bonds and notes during the previous month, the terms and conditions of sale or other disposition, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable is made a part of this order.

4. This order shall apply only to bonds and notes issued prior to June 30, 1913.

5. That portion of applicant's petition which affects the donation of the use of land, money and a water right to the Bureau of Plant Industry of the United States Government is denied, for the reason that this Commission's authorization is not necessary. That portion of the application which affects the furnishing of water free of charge to said Bureau of Plant Industry is held open until the Commission shall

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make its order in Case No. 293, at which time the application will be disposed of either by general order or specially.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23rd day of October, 1912.

DECISION No. 300.

IN THE MATTER OF THE APPLICATION OF THE COWELL PORTLAND CEMENT COMPANY AND BAY POINT AND CLAYTON RAILROAD COMPANY FOR THE ESTABLISHMENT OF A THROUGH ROUTE AND JOINT RATES IN CONNECTION WITH THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 232.

Decided October 25, 1912.

Complainants apply for an order requiring respondent company to establish through route and joint rates on shipments of cement from complainants' plant to various destinations.

Ordered, That the application be granted.

Ordered, That the parties seek to agree upon the proper division of the joint rates established, and, in the event of their failure to agree, the Commission will establish such division.

E. W. Camp, for Atchison, Topeka and Santa Fe Railway Company.
H. P. Anewalt, for Atchison, Topeka and Santa Fe Railway Company.
John F. Partridge, for complainants.

REPORT OF THE COMMISSION.

LOVELAND and GORDON, *Commissioners*.

This case was brought by the Bay Point and Clayton Railroad Company against the Atchison, Topeka and Santa Fe Railway Company, asking for through route and joint rates with that company, and before proceeding to an analysis of the evidence offered at the hearing of the case, the following general remarks will be of interest.

The Bay Point and Clayton Railroad Company is an incorporated company, the stock of which is owned by the Cowell Portland Cement Company. It is a common carrier and complies with the requirements

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which the law places upon common carriers of reporting to this Commission. It was built primarily to serve the industry known as the Cowell Portland Cement Company. It extends from the industry of said company at Cowell, California, nine miles to a place known as Bay Point, California, at which place it connects with the tracks of the defendant road.

Defendant claims that it is an industrial road or tap line built as a plant convenience, which is certainly correct as to the reason why it was built and approximately correct as to its character. It differs from the ordinary tap line or industrial road, however, in that it does considerable business for the public generally.

The importance of the question of industrial roads or tap line roads and their relation to public carriers has been recognized by the Interstate Commerce Commission, which Commission held, on its own initiative some years ago, an exhaustive investigation considering something over twenty-two hundred cases where tracks and locomotives were owned, controlled and used by industries. It was found by this investigation that a majority of these industrial roads or tap lines enjoyed no division of rates with the carriers with which they connected, but a large number did, and this was particularly true in territory west of the Mississippi River.

The investigation was confined to but one industry, namely, the lumber business, but it is probably fair to assume that approximately the same or similar conditions would be found surrounding business in other lines. The differing conditions, however, surrounding different cases justify this Commission in again declaring, as it has frequently done in former opinions, that it will decide each case brought before it on the merits of that particular case, and the decision in this case, therefore, will be based upon the conditions disclosed by the record which bring us to a consideration of the testimony offered at the hearing.

At the time this complaint was filed with the Commission a complaint was also filed against the Southern Pacific Company embodying the same grounds and asking for the same relief, namely, through route and joint rates with that road.

At the hearing, attorney for the complainants requested that the cases be heard separately, and complaint against the Atchison, Topeka and Santa Fe Railway Company was heard first.

The case against the Southern Pacific Company was then called and attorney for the Southern Pacific Company stipulated that, if permitted to file two exhibits, he was willing to submit the case on the testimony submitted at the hearing of the case against the Atchison, Topeka and Santa Fe Railway Company.

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Complainant bases its right to through route and joint rates upon a condition of facts set forth in an exhibit filed in the case marked Exhibit "A," which exhibit was amended because of inaccuracies and an amended Exhibit "A" filed. This exhibit shows certain joint rates between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company from cement-producing points to points in the San Joaquin Valley.

We do not believe that joint rates between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company from producing points located on the lines of the Southern Pacific Company to destinations reached by the Atchison, Topeka and Santa Fe Railway Company have any bearing on this case, except in so far as the joint rates named are measures of comparison as to what would be just and reasonable rates for a joint service over the Bay Point and Clayton Railroad Company in connection with the Atchison, Topeka and Santa Fe Railway.

To our minds, the principal points to be developed in this case are whether the defendant has voluntarily established through rates from cement plants served by branch line railroads without requiring the manufacturers to deliver their product at the main line junction point, and whether, under all the circumstances and conditions, it would be just and reasonable to establish from the cement plant of the complainants the same rate as applies from the junction at Bay Point.

The testimony as to the justification for through route and joint rates is the same in each case, but in order to pass upon the question of discrimination alleged in the complaint as to the Atchison, Topeka and Santa Fe Railway Company, it will be necessary to refer to cement rates which obtain elsewhere as disclosed by the tariffs of that road, a circumstance of which the Commission has the right to take judicial notice. We refer to the fact that the Atchison, Topeka and Santa Fe Railway Company, as well as the Southern Pacific Company, have extended their tracks from their main lines to a cement plant at Colton, California, and have accepted delivery of cement from that plant at the door of the plant, making rates therefrom to destination, thus giving to the cement plant at Colton an advantage over the Cowell Portland Cement Company, measured by the cost of transporting cement from the plant at Cowell to the junction of the Bay Point and Clayton Railroad Company with the Santa Fe at Bay Point.

The defendant has not required the plant at Colton to build an industrial railroad and deliver its product at the junction point, but has voluntarily relieved the plant of this expense, and in so doing, we can only assume that the rates thus extended to the door of the plant were considered by the defendant just and reasonable rates. At the same

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time we find a cement plant located at Riverside which the defendant requires to deliver its product to the junction point of its railroad and the rates from said junction point to consuming markets are the same as are extended to the door of the Colton plant.

The practice of extending main line rates to branch roads constructed to serve industries, and allowing such branch roads a division of the through rate is not at all uncommon in this State or any other state. The Iron Mountain Railway, which extends from Keswick, California, to the plant of the Mountain Copper Company, enjoys through route and joint rates voluntarily put in by the Southern Pacific Company, the Iron Mountain Railway Company receiving on class rates from 5½ cents to 8 9-10 cents on San Francisco traffic, with varying amounts from other points.

The defendant in this case has extended its main line rates to industries served by the Richmond Belt Railroad, and from such rates allows a division to the Richmond Belt Railroad. We could point to numerous cases where defendant has extended its main line rates to branch line points, and also to points served by separately owned and operated properties.

We do not wish to be understood as claiming that carriers should always be required to extend their main line rates to branch lines which reach industries, nor do we wish to be understood as claiming that when rates are higher on a branch line involving additional movement than those in effect to a junction point, that discrimination must necessarily exist in favor of the shipper from the junction point. In other words, all of the circumstances as to character of the product, policy of the carrier elsewhere under like circumstances, etc., must be considered, and in the case now under consideration, where we are considering solely the rates on cement, to extend main line cement rates from junction point to some plants, and decline to do so for other plants, constitutes a discrimination which should be removed.

The testimony in the case showed that there was a movement of tonnage on the Bay Point and Clayton Railroad outbound from Clayton during the year 1910 of merchandise other than cement of 5,935,265 pounds. That in 1911 the outbound movement, other than cement, had increased to 6,341,735 pounds. The inbound tonnage other than cement to Clayton for 1910 was 1,085,602 pounds, and in 1911 it was 1,708,158 pounds.

The Commission will not at this time say that through route and joint rates should be extended to complainant on its tonnage other than cement, but is of the opinion that the extension by defendant of its tracks from its main line to the cement plant at Colton, California, receiving the freight at the plant and making the rates from that plant

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to destination, justifies the Commission in the opinion that through route and joint rates on cement should be published and put in effect on shipments of cement between the defendant, the Atchison, Topeka and Santa Fe Railway Company, and complainant, the Bay Point and Clayton Railroad Company from the plant at Cowell.

We find as a fact from the evidence in this case that no satisfactory through route and joint rates for the transportation of cement now exist between Cowell and points in California on the lines of the Atchison, Topeka and Santa Fe Railway Company, and that public convenience and necessity demand the establishment of a through route and joint rates for cement between said points.

We find, further, as a fact that the rates for the transportation of cement which are now in effect between Bay Point, California, and points on the line of the Atchison, Topeka and Santa Fe Railway Company within the State of California are at least just and reasonable joint rates for the transportation of cement between Cowell, California, and said points on the lines of the Atchison, Topeka and Santa Fe Railway Company within the State of California.

We are of the opinion that cement rates generally in California, owing to the rapid growth of the cement industry and the great demand for cement, are in need of revision and that a revision of the joint rates herein established will probably be necessary. If the parties cannot agree upon the divisions between them of the joint rates herein established by the Commission, they shall apply to the Commission for a supplemental order establishing said divisions.

We recommend that the following order be issued:

ORDER.

The Cowell Portland Cement Company, a corporation, and the Bay Point and Clayton Railroad Company, a corporation, having applied to this Commission for through route and joint rates with the Atchison, Topeka and Santa Fe Railway Company, on shipments of cement from the plant of complainants at Cowell, California, to various destinations, and the Commission finding as a fact that no satisfactory through route and joint rates for the transportation of cement now exist between Cowell, California, and points in California on the line of the Atchison, Topeka and Santa Fe Railway Company, and that public convenience and necessity demand the establishment of through route and joint rates on cement between said points and that the rates on cement now in effect between Bay Point and points on lines of the Atchison, Topeka and Santa Fe Railway Company in California will be at least just and reasonable joint rates for cement moving between Cowell and said points on the Atchison, Topeka and Santa Fe Railway, and basing its

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conclusions on the foregoing findings of fact and on the further statement of facts which appear in the opinion which precedes this order,

It is hereby ordered as follows:

First—That through route and joint rates for the transportation of cement are hereby established between Cowell, California, and all points in California on the lines of the Atchison, Topeka and Santa Fe Railway Company; said joint rates shall be the rates which are now charged by the Atchison, Topeka and Santa Fe Railway Company for cement moving from Bay Point to such points on its said line of railway.

Second—The Atchison, Topeka and Santa Fe Railway Company is hereby ordered to publish and file with the Commission within twenty (20) days from the service upon it of this order tariffs showing such through route and joint rates.

Third—The parties hereto shall seek to agree upon a proper division of the joint rates herein established, but in event such agreement cannot be reached on or before fifteen (15) days from the service of this order upon the parties hereto, this Commission will proceed to establish the division of said joint rates as provided by law.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of October, 1912.

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RECOMMENDATIONS OF THE COMMISSION IN CONNECTION WITH THE DECISIONS IN CASE 232 AND CASE 233.

It is apparent to the Commission that main points in controversy in these cases are the divisions or allowances to be made complainants and intervenors for delivery of cement to main line junction points of the defendants.

The Commission desires to dispose of this controversy, if possible, at this time and the recommendations hereafter made have this object in view. We, therefore, recommend the following:

1. That the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company arrange to publish divisions of the joint rates established in the decisions in Case No. 232 and Case No. 233 on the following basis:

(*a*) When rate from Cement or Cowell to destination is $1.00 per ton of 2,000 pounds, or less, the Bay Point and Clayton Railroad and the Cement, Tolenas and Tidewater Railroad shall receive ten cents (10c) per ton, maximum five (5.00) dollars per car.

(*b*) When the rate from Cowell or Cement to destination is in excess of $1.00 per ton of 2,000 pounds, the Bay Point and Clayton Railroad and the Cement, Tolenas and Tidewater Railroad shall receive twenty (20) cents per ton.

2. That the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company arrange to publish rates through from the plant of the Riverside Portland Cement Company on the same basis as now apply from the Colton plant, and arrange for the same allowance for the railroad operated by the Riverside Portland Cement Company as we recommend for the Bay Point and Clayton Railroad and the Cement, Tolenas and Tidewater Railroad, whenever the railroad operated by the Riverside plant brings itself within the requirements of the Public Utilities Act governing common carriers.

3. That the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company establish in connection with their cement rates and the joint rates established by the Commission in Case 232 and Case 233 the following minimum carload weights:

(*a*) When the rate from point of origin to destination is 75 cents per ton, or less, minimum carload weight shall be the marked capacity of the car.

(*b*) When the rate from point of origin to destination is in excess of 75 cents per ton, minimum carload weight shall be 60,000 pounds.

4. Many informal complaints have been made to the Commission concerning excessive cement rates between the mills of northern and southern California and San Joaquin Valley points. We have made a careful study of this situation and suggest to the carriers that the

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following rates from various cement plants to points in the San Joaquin Valley be published:

Rates Recommended on Cement, Carload, from Cowell, Colton, and Riverside to Points on Lines of the Atchison, Topeka, and Santa Fe Railway Company.

From Cowell to—	Rates in cents per ton of 2,000 pounds.
Empire	170
Merced	235
Fresno	320
Reedley	330
Dinuba	335
Visalia	340
Hanford	335
Tulare	340
Bakersfield	360
From Colton and Riverside to—	
Fresno	390
Calwa	390
Cecile	390
Mattei	390
Lone Star	390
Wolf	390
Del Rey	390
Miley	390
Parlier	390
Lac Jac	390
Reedley	390
Darwin	395
Nino	395
Wahtoke	395
Minkler	400
Oakhurst	400
Piedna	400
Dinuba	390
Tokay	390
Sultana	390
Cutler	390
Yettem	390
Peral	390
Visalia	385
Pasuco	385
Loma	385
Swall	385
Imhoff	380
Tulare	375
Robla	380
Paige	380
Waukena	380

From Colton and Riverside to—	Rates in cents per ton of 2,000 pounds.
Oleander	390
Bowles	390
Monmouth	390
Conejo	385
Laton	385
Clint	390
Cornwall	390
Gepford	390
Lanare	390
Harlow	385
Lucerne	385
Banner	385
Hanford	380
Clinker	380
Odessa	380
Guernsey	380
Bean	380
Corcoran	375
Turnbull	375
Blanco	375
Angiola	375
Spa	375
Stoil	370
Allensworth	370
Kernell	370
Pond	365
Elmo	365
Wasco	365
Palmo	365
Shafter	360
Rosedale	360
Jastro	355
Bakersfield	355

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Rates Recommended on Cement, Carload, from Cement, Cowell, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.
Rates in cents per ton of 2,000 pounds.

TO—	From Cement, Cowell, and Napa Junction.	From Davenport.
Yarmouth	135	
Vernalis	145	
Ohm	145	
Romain	150	
Westley	155	175
Vanormer	160	180
Patterson	165	185
Crows Landing	170	190
Stomar	175	195
Timba	175	195
Newman	180	200
Gustine	185	205
Linora	190	210
Ingomar	195	215
Volta	205	225
Trent	210	230
Los Banos	215	235
Abatto	220	240
Agatha	230	250
Brito	235	255
Dos Palos	235	255
Oxalis	250	270
Silaxo	255	275
Firebaugh	260	280
York	265	285
Arbios	270	290
Mendota	275	295
White's Bridge	275	295
Ingle	285	305
Tranquillity	300	320
Caldwell	320	340
Helm	325	345
Burrell	325	345
Riverdale	325	345
Robinson	325	345
Hub	325	345
Lynn	325	345

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.
Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Jameson	----------	305	325
Kerman	395	305	325
Rugg	395	310	330
Floyd	395	310	330
Rolinda	395	315	335
Kearny	395	320	340
Nevills	395	320	340
Patton	395	320	340
Forsey	395	320	340
Crayold	395	320	340
Wesby	390	320	340
McMullin	395	315	335
Raisin City	395	320	340
Caruthers	390	320	340
Cando	390	325	345
Lillis	390	325	345
Hardwick	390	325	345
Kimble	385	330	350
Armona	385	330	350
Orin	385	330	350
Lemoore	390	335	355
Heinlen	390	335	355
Rossi	390	335	355
Cuneo	390	340	360
Marsala	390	340	360
Stratton	395	340	360
Lethent	390	340	360
Huron	400	345	365
Turk	400	350	370
Ora	405	355	375
Coalinga	405	355	375
Crump	405	355	375
Alcalde	405	355	375
Hanford	380	335	355
Remnoy	380	335	355

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Rates Recommended on Cement, Carload, from Cement, Cowell, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.
Rates in cents per ton of 2,000 pounds.

TO—	From Cement, Cowell, and Napa Junction.	From Davenport.
Manteca	135	155
Morrano	135	155
Weston	145	165
Ripon	150	170
Salida	160	180
Modesto	170	190
Ceres	180	200
Esmar	180	200
Keyes	185	205
Turlock	190	210
Delhi	200	220
Livingston	210	230
Arena	215	235
Atwater	220	240
Buhach	225	245
Fergus	230	250
Merced	235	255
Lingard	245	265
Athlone	250	270
Sierra Vista	260	280
Minturn	260	280
McNear	265	285
Califa	270	290
Berenda	275	295
Talbot	295	315
Daulton	305	325
Jesbel	320	340
Knowles	320	340
Raymond	320	340
Madera	290	310
Borden	295	315
Irrigosa	300	320
Tharsa	305	325
Herndon	310	330
Muscatel	320	340
Fresno	320	340

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.
Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Barton	395	320	340
Granz	395	325	345
Maltermoro	395	325	345
Las Palmas	395	325	345
Eggers	395	325	345
Vanris	395	325	345
Tarpey	395	325	345
Melvin	395	325	345
Clovis	400	325	345
Deering	400	330	350
Glorietta	400	330	350
Gordon	400	330	350
Nopoc—El Prado	400	330	350
Gravel	400	335	355
Friant	405	335	355
Ball	390	320	340
Mars	390	320	340
Blossoma	390	320	340
Luvita	390	320	340
Eshel	390	320	340
Butler	390	320	340
Locans	390	320	340
Ivesta	390	325	345
Clotho	390	325	345
Sanger	390	325	345
Tarn	390	325	345
Fargo	390	330	350
Lac Jac	390	330	350
Samuel	390	330	350
Reedley	390	330	350
Dinuba	390	335	355
Smyrna	385	335	355
Monson	385	335	355
Taurusa	385	340	360
Klink	385	340	360
Dorsey	380	340	360
Roche	380	340	360
Kaweah	380	340	360
Lort	380	345	365
Exeter	380	345	365
Burr	385	345	365
Lindsay	380	345	365
Strathmore	375	345	365
Zante	375	350	370
Lisko	375	350	370
Kurth	375	350	370
Porterville	375	350	370
Adobe	375	350	370
Worth	375	350	370
Success	375	355	375
Globe	380	355	375
Springville	380	355	375
Bonar	375	350	370
Ponca	375	350	370
Lois	375	350	370
Terra Bella	370	350	370
Ducor	370	355	375
Orris	370	355	375

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.
Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Richgrove	370	355	375
Jasmin	365	355	375
Crayeroft	390	320	310
Calwa	390	320	310
Malaga	390	320	310
Hovant	390	320	310
Fowler	390	325	345
Star	390	325	345
Selma	385	325	345
Kingsburg	385	330	350
Traver	385	330	350
Goshen Junction	380	335	355
Jacobs' Spur	380	340	360
Visalia	385	340	360
Ambler	385	340	360
Farmersville	380	340	360
Giant Oak	380	345	365
Luna	380	345	365
Tagus	380	340	360
Tulare	375	340	360
Octol	375	345	365
Tipton	375	345	365
Quail	370	345	365
Pixley	370	345	365
Earlimart	370	350	370
Radnor	370	350	370
Delano	365	350	370
McFarland	365	355	375
Hunt	365	355	375
Famosa	365	355	375
Page	360	355	375
Lerdo	360	360	380
Saco	360	360	380
Oil Junction	355	360	380
Boaz	360	360	380
Waits	360	360	380
Seguro	360	360	380
Maltha	360	360	380
Volcan	360	360	380
Cesaro	360	365	385
Oil City	360	365	385
Ainrof	360	365	385
Cuando	360	365	385
Porque	360	365	385
Nome	355	360	380
Bakersfield	355	360	380
Kern Junction	355	365	385
Stock Corral	355	365	385
Wible Orchard	360	365	385
Gosford	360	365	385
Stevens	365	370	390
Rio Bravo	365	375	395
Bowerbank	370	375	395
Button Willow	370	380	400
Lokern	375	380	400
Asphalto	380	385	405
McKittrick	380	385	405
Olig	380	385	405

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Sunset Railway Company.
Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Bakersfield Corrals	355	365	385
Wible Orchard	360	365	385
Gosford	360	365	385
Connor	360	370	390
Millux	370	370	390
San Emido	370	375	395
Pentland	375	380	400
Kerto	375	380	400
Welco	375	380	400
Lio	375	380	400
Copen	375	380	400
Signa	375	380	400
Lowry	380	380	400
Taft	380	380	400
Milso	380	385	405
Midoil	380	385	405
Fellow	380	385	405
Suplico	380	385	405
Shale	385	385	405
Hazleton	375	380	400
Monarch	375	380	400

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DECISION No. 301.

IN THE MATTER OF THE APPLICATION OF THE COWELL PORTLAND CEMENT COMPANY AND BAY POINT AND CLAYTON RAILROAD COMPANY FOR THE ESTABLISHMENT OF THROUGH ROUTE AND JOINT RATES IN CONNECTION WITH THE SOUTHERN PACIFIC COMPANY.

Case No. 233.

Decided October 25, 1912.

Complainants apply for an order requiring respondent company to establish through route and joint rates on shipments of cement from complainants' plant to various destinations.

Ordered, That the application be granted.

Ordered, That the parties seek to agree upon the proper division of the joint rates established, and, in the event of their failure to agree, the Commission will establish such division.

George D. Squires, for Southern Pacific Company.
John S. Partridge, for complainants.
Seth Mann, for intervenors, Pacific Portland Cement Company and Cement, Tolenas and Tidewater Railway Company.

REPORT OF THE COMMISSION.

LOVELAND AND GORDON, *Commissioners.*

This case was brought by the Cowell Portland Cement Company and the Bay Point and Clayton Railroad Company against the Southern Pacific Company asking for through route and joint rates with that company, a similar complaint being filed at the same time against the Atchison, Topeka and Santa Fe Railway Company, which case was No. 232, and reference is hereby made to the general remarks found in the opinion in Case No. 232 on the subject of through route and joint rates between industrial or tap line roads and large steam roads.

At the hearing, the Pacific Portland Cement Company and the Cement, Tolenas and Tidewater Railway Company, through Attorney Seth Mann, asked for, and were granted, leave to file a petition in intervention.

Case No. 232, against the Atchison, Topeka and Santa Fe Railway Company, was heard first, and it was then stipulated by counsel that this case should be submitted upon the evidence adduced in Case No. 232, Mr. Squires, attorney for defendant in this case, asking as a part of such stipulation that he should be permitted to file two statements as exhibits in this case.

In the opinion in the case at bar, it is necessary to refer to general

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conditions obtaining in cement rates as disclosed by defendant's published tariffs as was done in the opinion in Case No. 232.

Complainant bases its right to through route and joint rates upon the allegation in the complaint which was supported by testimony in Case No. 232, effective by stipulation in this case.

First—That it is a public carrier transporting for the public generally considerable tonnage in addition to the moving of cement from its plant, for which reason it is entitled to through route and joint rates with defendant; and,

Secondly—In extending rates from main line junction points to the door of the Santa Cruz Portland Cement Company at Davenport on a branch line constructed for the sole purpose of transporting cement, and refusing to extend the main line rates from junction points to the plant served by separately operated properties, constitutes an unjust and unreasonable discrimination against the plants served by such separately operated railroads, and that this discrimination amounts to the cost of transporting cement from the plants located on these separately operated railroads to the junction points from which the main line rates apply.

Considerable testimony was offered as to the volume of business done by the Bay Point and Clayton Railroad Company for the public generally other than transporting its own product, the total earnings of the road being given as fifty-five thousand five hundred twenty-five and 99/100 (55,525.99) dollars for the fiscal year ending June 30, 1911, four hundred and twelve (412) dollars of which resulted from passenger traffic and the remainder from freight traffic.

As was stated in Case No. 232, the Commission is of the opinion that large steam roads should not in all cases be required to give through route and joint rates with industrial or tap line roads but that each case coming before the Commission must be considered upon the merits of that particular case, and in granting the prayer of complainant in this case and ordering the defendant to publish through route and joint rates with complainants and intervenors on cement the opinion of the Commission is not based upon the right of complainants and intervenors to through route and joint rates by reason of the volume of the traffic other than the movement of cement, but upon the circumstances disclosed in the case relating to the charge of discrimination and the reasonableness of the rate, which we believe has been sustained.

As shown by the tariffs of defendant company, of which the Commission is entitled to take judicial notice, the Southern Pacific Company extended its tracks from its main line to the Colton plant, and receives the product of the company there at the door of the plant, making its rates to destination from the plant. It, also, as is shown by its tariffs,

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receives the product of the Santa Cruz Portland Cement Company at the door of the plant at Davenport, making its rates to destination from that plant.

In considering the claim of discrimination against the plants served by separately operated railroads, we must consider all of the circumstances surrounding the construction of the branch line railroad.

A witness for the intervenors testified that request was made on the Southern Pacific Company to construct a branch line from Tolenas to the cement plant of the Pacific Portland Cement Company, but the defendant positively refused to do so.

There is on file with this Commission a copy of a contract entered into on the 17th day of August, 1905, between the Santa Cruz Portland Cement Company and the Southern Pacific Company, showing that the Southern Pacific Company built the railroad from Santa Cruz to Davenport for the Santa Cruz Portland Cement Company, receiving for such construction a certain sum, which was to be returned to the Santa Cruz Portland Cement Company after a certain amount of money had been received by the Southern Pacific Company for the transportation of cement from the plant of the Santa Cruz Portland Cement Company.

Tariffs on file with this Commission also disclose the fact that a few years ago when a cement company was about to be established at San Juan, known as the San Juan Portland Cement Company, the Southern Pacific Company published joint through rates in connection with the San Juan Pacific Railway Company, which was an adjunct of the San Juan Portland Cement Company, and that under such through route and joint rates there was a considerable movement of equipment for the construction of a plant at San Juan on which the San Juan Pacific received a division of the through rate, which through rates were the main line rates extended to apply to San Juan.

The defendant maintains joint rates in connection with the Iron Mountain Railway, an adjunct of the Mountain Copper Company, which joint rates are the rates applying to Keswick, the main line junction point on the Southern Pacific and from which joint rates the Iron Mountain Railway receives a division for its services.

The defendant has extended its main line rates to industries served by the Richmond Belt Railroad, and allows that line a division of such rates.

Numerous cases could be cited where main line rates on various commodities have been extended to apply on branch lines and on separately operated lines. We would not be understood as contending that in every case junction point rates should be extended to apply to branch line points, but when it has been voluntarily done by the carriers, the presumption must be entertained that the rates are at least reasonable from carriers' standpoint.

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In receiving the product of the cement plant at Colton at the door of the plant, making its rates therefrom to destination, and in receiving the product of the Santa Cruz Portland Cement Company at the door of the plant with rates therefrom to destination, while it compels the Cowell Portland Cement Company to deliver its produce at the junction at Bay Point and the Pacific Portland Cement Company to deliver its product at junction at Tolenas, the defendant is discriminating against complainants and intervenors. It must be apparent that the only obligation of the defendant in naming rates for the cement plant at Davenport or at Colton was to name rates from the main line junction points if it was to be consistent with its policy towards other plants, but instead the defendant has chosen to extend its main line rates to the door of these other plants while declining to do so for the complainants and intervenors.

We find as a fact from the evidence in this case that no satisfactory through route and joint rates for the transportation of cement now exist between Cowell, California, and points on the line of the Southern Pacific Company within the State of California and between Cement, California, and points on the lines of the Southern Pacific Company within the State of California and that public convenience and necessity demand the establishment of through routes and joint rates for the transportation of cement between said points.

We find further that the rates on cement which are now in effect between Bay Point, California, and points on the lines of the Southern Pacific Company in California would be at least reasonable joint rates for the transportation of cement between Cowell and said points on the lines of the Southern Pacific Company within the State of California.

We also find that rates on cement which are now in effect between Tolenas, California, and points on the lines of the Southern Pacific Company in California would be at least reasonable joint rates for the transportation of cement between Cement and points in California on the lines of the Southern Pacific Company.

We are of the opinion that the cement rates generally in California, owing to the rapid growth of the cement industry and the largely increased demand for cement, are in need of revision, and that a revision of the joint rates herein established will probably be necessary.

If the parties cannot agree upon the divisions between them of the joint rates herein established by the Commission, they shall apply to the Commission for a supplemental order establishing such divisions.

We recommend that the following form of order be issued:

ORDER.

The Cowell Portland Cement Company, a corporation, and the Bay Point and Clayton Railroad Company, a corporation, having applied to this Commission for through route and joint rates with the Southern

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Pacific Company on shipments of cement from the plant of the complainant at Cowell, California, to various destinations, and the Pacific Portland Cement Company, a corporation, and the Cement, Tolenas and Tidewater Railroad Company, a corporation, having intervened and asked for a similar order on shipments of cement from Cement, California, to various destinations, and the Commisson finding as a fact that no satisfactory through route and joint rates for the transportation of cement now exist between Cowell, California, and points on the lines of the Southern Pacific Company within the State of California, and from Cement, California, to points on the lines of the Southern Pacific Company within the State of California, and the Commission further finding that public convenience and necessity demand the establishment of through routes and joint rates for the transportation of cement between said points, and that the rates on cement now in effect between Bay Point and points on the lines of the Southern Pacific Company in California will be at least just and reasonable joint rates for transportation of cement between Cowell, California, and said points on the lines of the Southern Pacific Company within the State of California, and that the rates on cement now in effect between Tolenas, California, and points on the lines of the Southern Pacific Company in California will be at least just and reasonable joint rates for transportation of cement between Cement and said points on the lines of the Southern Pacific Company within the State of California, and basing its findings upon the foregoing findings of fact and upon the further statement of facts which appear in the opinion which precedes this order.

It is hereby ordered as follows:

First—Through routes and joint rates for the transportation of cement are hereby established between Cowell, California, and all points in California on the lines of the Southern Pacific Company; said joint rates shall be the rates which are now charged by the Southern Pacific Company for the transportation of cement from Bay Point to such points on its said line of railway.

Second—Through routes and joint rates for the transportation of cement are hereby established between Cement, California, and all points in California on the lines of the Southern Pacific Company; said joint rates shall be the rates which are now charged by the Southern Pacific Company for transportation of cement from Tolenas to such points on its said line of railway.

Third—The Southern Pacific Company is hereby ordered to publish and file with the Commission within twenty (20) days from the service upon it of this order tariffs showing such through routes and joint rates.

Fourth—The parties hereto shall seek to agree upon the proper division of the joint rates herein established, but in event such agreement

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cannot be reached on or before fifteen (15) days from the service of this order upon the parties hereto, this Commission will proceed to establish the division of said joint rates as provided by law.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of October, 1912.

RECOMMENDATIONS OF THE COMMISSION IN CONNECTION WITH THE DECISIONS IN CASE 232 AND CASE 233.

It is apparent to the Commission that main points in controversy in these cases are the divisions or allowances to be made complainants and intervenors for delivery of cement to main line junction points of the defendants.

The Commission desires to dispose of this controversy, if possible, at this time and the recommendations hereafter made have this object in view. We, therefore, recommend the following:

1. That the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company arrange to publish divisions of the joint rates established in the decisions in Case No. 232 and Case No. 233 on the following basis:

(*a*) When rate from Cement or Cowell to destination is $1.00 per ton of 2,000 pounds, or less, the Bay Point and Clayton Railroad and the Cement, Tolenas and Tidewater Railroad shall receive ten cents (10c) per ton, maximum five (5.00) dollars per car.

(*b*) When the rate from Cowell or Cement to destination is in excess of $1.00 per ton of 2,000 pounds, the Bay Point and Clayton Railroad and the Cement, Tolenas and Tidewater Railroad shall receive twenty (20) cents per ton.

2. That the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company arrange to publish rates through from the plant of the Riverside Portland Cement Company on the same basis as now apply from the Colton plant and arrange for the same allowance for the railroad operated by the Riverside Portland Cement Company as we recommend for the Bay Point and Clayton Railroad and the Cement, Tolenas and Tidewater Railroad whenever the railroad operated by the Riverside plant brings itself within the requirements of the Public Utilities Act governing common carriers.

3. That the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company establish in connection with their cement rates and the joint rates established by the Commission in Case 232 and Case 233 the following minimum carload weights:

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(*a*) When the rate from point of origin to destination is 75 cents per ton, or less, minimum carload weight shall be the marked capacity of the car.

(*b*) When the rate from point of origin to destination is in excess of 75 cents per ton minimum carload weight shall be 60,000 pounds.

4. Many informal complaints have been made to the Commission concerning excessive cement rates between the mills of northern and southern California and San Joaquin Valley points. We have made a careful study of this situation and suggest to the carriers that the following rates from various cement plants to points in the San Joaquin Valley be published:

Rates Recommended on Cement, Carload, from Cowell, Colton, and Riverside to Points on Lines of the Atchison, Topeka, and Santa Fe Railway Company.

From Cowell to—	Rates in cents per ton of 2,000 pounds.
Empire	170
Merced	235
Fresno	320
Reedley	330
Dinuba	335
Visalia	340
Hanford	335
Tulare	340
Bakersfield	360
From Colton and Riverside to—	
Fresno	390
Calwa	390
Cecile	390
Mattei	390
Lone Star	390
Wolf	390
Del Rey	390
Miley	390
Parlier	390
Lac Jac	390
Reedley	390
Darwin	395
Nino	395
Wahtoke	395
Minkler	400
Oakhurst	400
Piedna	400
Dinuba	390
Tokay	390
Sultana	390
Cutler	390
Yettem	390
Peral	390
Visalia	385
Pasuco	385
Loma	385
Swall	385
Imhoff	380
Tulare	375
Robla	380
Paige	380
Waukena	380

From Colton and Riverside to—	Rates in cents per ton of 2,000 pounds.
Oleander	390
Bowles	390
Monmouth	390
Conejo	385
Laton	385
Clint	390
Cornwall	390
Gepford	390
Lanare	390
Harlow	385
Lucerne	385
Banner	385
Hanford	380
Clinker	380
Odessa	380
Guernsey	380
Bean	380
Corcoran	375
Turnbull	375
Blanco	375
Angiola	375
Spa	375
Stoil	370
Allensworth	370
Kernell	370
Pond	365
Elmo	365
Wasco	365
Palmo	365
Shafter	360
Rosedale	360
Jastro	355
Bakersfield	355

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Rates Recommended on Cement, Carload, from Cement, Cowell, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.

Rates in cents per ton of 2,000 pounds.

TO—	From Cement, Cowell, and Napa Junction.	From Davenport.
Yarmouth	135	----------
Vernalis	145	----------
Ohm	145	----------
Romain	150	----------
Westley	155	175
Vanormer	160	180
Patterson	165	185
Crows Landing	170	190
Stomar	175	195
Timba	175	195
Newman	180	200
Gustine	185	205
Linora	190	210
Ingomar	195	215
Volta	205	225
Trent	210	230
Los Banos	215	235
Abatto	220	240
Agatha	230	250
Brito	235	255
Dos Palos	235	255
Oxalis	250	270
Silaxo	255	275
Firebaugh	260	280
York	265	285
Arbios	270	290
Mendota	275	295
White's Bridge	275	295
Ingle	285	305
Tranquillity	300	320
Caldwell	320	340
Helm	325	345
Burrell	325	345
Riverdale	325	345
Robinson	325	345
Hub	325	345
Lynn	325	345

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.

Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Jameson	----------	305	325
Kerman	395	305	325
Rugg	395	310	330
Floyd	395	310	330
Rolinda	395	315	335
Kearny	395	320	340
Nevills	395	320	340
Patton	395	320	340
Forsey	395	320	340
Crayold	395	320	340
Wesby	390	320	340
McMullin	395	315	335
Raisin City	395	320	340
Caruthers	390	320	340
Cando	390	325	345
Lillis	390	325	345
Hardwick	390	325	345
Kimble	385	330	350
Armona	385	330	350
Orin	385	330	350
Lemoore	390	335	355
Heinlen	390	335	355
Rossi	390	335	355
Cuneo	390	340	360
Marsala	390	340	360
Stratton	395	340	360
Lethent	390	340	360
Huron	400	345	365
Turk	400	350	370
Ora	405	355	375
Coalinga	405	355	375
Crump	405	355	375
Alcalde	405	355	375
Hanford	380	335	355
Remnoy	380	335	355

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Rates Recommended on Cement, Carload, from Cement, Cowell, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.

Rates in cents per ton of 2,000 pounds.

TO—	From Cement, Cowell, and Napa Junction.	From Davenport.
Manteca	135	155
Morrano	135	155
Weston	145	165
Ripon	150	170
Salida	160	180
Modesto	170	190
Ceres	180	200
Esmar	180	200
Keyes	185	205
Turlock	190	210
Delhi	200	220
Livingston	210	230
Arena	215	235
Atwater	220	240
Buhach	225	245
Fergus	230	250
Merced	235	255
Lingard	245	265
Athlone	250	270
Sierra Vista	260	280
Minturn	260	280
McNear	265	285
Califa	270	290
Berenda	275	295
Talbot	295	315
Daulton	305	325
Jesbel	320	340
Knowles	320	340
Raymond	320	340
Madera	290	310
Borden	295	315
Irrigosa	300	320
Tharsa	305	325
Herndon	310	330
Muscatel	320	340
Fresno	320	340

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.

Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Barton	395	320	340
Granz	395	325	345
Maltermoro	395	325	345
Las Palmas	395	325	345
Eggers	395	325	345
Vanris	395	325	345
Tarpey	395	325	345
Melvin	395	325	345
Clovis	400	325	345
Deering	400	330	350
Glorietta	400	330	350
Gordon	400	330	350
Nopoc—El Prado	400	330	350
Gravel	400	335	355
Friant	405	335	355
Ball	390	320	340
Mars	390	320	340
Blossoma	390	320	340
Luvita	390	320	340
Eshel	390	320	340
Butler	390	320	340
Locans	390	320	340
Ivesta	390	325	345
Clotho	390	325	345
Sanger	390	325	345
Tarn	390	325	345
Fargo	390	330	350
Lac Jac	390	330	350
Samuel	390	330	350
Reedley	390	330	350
Dinuba	390	335	355
Smyrna	385	335	355
Monson	385	335	355
Taurusa	385	340	360
Klink	385	340	360
Dorsey	380	340	360
Roche	380	340	360
Kaweah	380	340	360
Lort	380	345	365
Exeter	380	345	365
Burr	385	345	365
Lindsay	380	345	365
Strathmore	375	345	365
Zante	375	350	370
Lisko	375	350	370
Kurth	375	350	370
Porterville	375	350	370
Adobe	375	350	370
Worth	375	350	370
Success	375	355	375
Globe	380	355	375
Springville	380	355	375
Bonar	375	350	370
Ponca	375	350	370
Lois	375	350	370
Terra Bella	370	350	370
Ducor	370	355	375
Orris	370	355	375

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Lines of Southern Pacific Company.

Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Richgrove	370	355	375
Jasmin	365	355	375
Crayeroft	390	320	340
Calwa	390	320	340
Malaga	390	320	340
Hovant	390	320	340
Fowler	390	325	345
Star	390	325	345
Selma	385	325	345
Kingsburg	385	330	350
Traver	385	330	350
Goshen Junction	380	335	355
Jacobs' Spur	380	340	360
Visalia	385	340	360
Ambler	385	340	360
Farmersville	380	340	360
Giant Oak	380	345	365
Luna	380	345	365
Tagus	380	340	360
Tulare	375	340	360
Octol	375	345	365
Tipton	375	345	365
Quail	370	345	365
Pixley	370	345	365
Earlimart	370	350	370
Radnor	370	350	370
Delano	365	350	370
McFarland	365	355	375
Hunt	365	355	375
Famosa	365	355	375
Page	360	355	375
Lerdo	360	360	380
Saco	360	360	380
Oil Junction	355	360	380
Boaz	360	360	380
Waits	360	360	380
Seguro	360	360	380
Maltha	360	360	380
Volcan	360	360	380
Cesaro	360	365	385
Oil City	360	365	385
Ainrof	360	365	385
Cuando	360	365	385
Porque	360	365	385
Nome	355	360	380
Bakersfield	355	360	380
Kern Junction	355	365	385
Stock Corral	355	365	385
Wible Orchard	360	365	385
Gosford	360	365	385
Stevens	365	370	390
Rio Bravo	365	375	395
Bowerbank	370	375	395
Button Willow	370	380	400
Lokern	375	380	400
Asphalto	380	385	405
McKittrick	380	385	405
Olig	380	385	405

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Rates Recommended on Cement, Carload, from Riverside, Colton, Cowell, Cement, Napa Junction, and Davenport to Points on Sunset Railway Company.

Rates in cents per ton of 2,000 pounds.

TO—	From Riverside and Colton.	From Cowell, Cement, and Napa Junction.	From Davenport.
Bakersfield Corrals	355	365	385
Wible Orchard	360	365	385
Gosford	360	365	385
Connor	360	370	390
Millux	370	370	390
San Emido	370	375	395
Pentland	375	380	400
Kerto	375	380	400
Welco	375	380	400
Lio	375	380	400
Copen	375	380	400
Signa	375	380	400
Lowry	380	380	400
Taft	380	380	400
Milso	380	385	405
Midoil	380	385	405
Fellow	380	385	405
Suplico	380	385	405
Shale	385	385	405
Hazleton	375	380	400
Monarch	375	380	400

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DECISION No. 302.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY FOR PERMISSION TO CONSTRUCT AN INDUSTRY TRACK AT GRADE ACROSS CERTAIN PUBLIC STREETS IN THE CITY OF BAKERSFIELD, KERN COUNTY, CALIFORNIA.

Application No. 269.

Decided October 25, 1912.

REPORT OF THE COMMISSION.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having on October 22, 1912, filed with the Commission its application for permission to construct an industry track at grade across certain public streets in the city of Bakersfield, Kern County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit from the board of trustees of the city of Bakersfield, to construct said crossings at grade, that it is not reasonable nor practicable to avoid grade crossings with said public streets, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted The Atchison, Topeka and Santa Fe Railway Company to construct an industry track at grade in the city of Bakersfield, Kern County, California, across "L" street, "M" street, "N" street, "O" street, "P" street and "Q" street, as shown by the map attached to the application and subject to the following conditions, viz.:

1. The entire expense of constructing the crossings, together with the cost of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

2. Applicant shall provide the necessary crossing plank or guard-rails for said crossings and shall ballast same with first-class broken stone or gravel ballast to a depth of not less than six (6) inches, and shall otherwise construct same in a good and substantial manner and in conformity with the permission granted by the board of trustees of the city of Bakersfield authorizing their construction.

3. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 25th day of October, 1912.

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DECISION NO. 303.

CLARK & HENERY CONSTRUCTION COMPANY,
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 254.

Decided October 26, 1912.

Complaint asks for reparation for an alleged excessive charge on a carload of machinery, alleged that subsequent to the charge respondent voluntarily reduced the rate.

Held, That the voluntary reduction of a freight rate does not in itself establish the unreasonableness of the rate as it stood prior to the reduction. Claim for reparation denied.

J. O. Bracken, for complainant.
George D. Squires, for defendant.

REPORT OF THE COMMISSION.

GORDON AND EDGERTON, *Commissioners.*

In this action complainant asks for reparation to the amount of twelve (12) dollars, for an alleged excessive charge on a carload of machinery shipped from San Carlos to Sacramento on November 7, 1910.

The rate charged on this shipment was 18 cents per hundred pounds, with a carload minimum of 24,000 pounds, as provided in Southern Pacific Company's Tariff C. R. C. 134. This rate is a combination of the locals on San Francisco of 5 cents per hundred pounds from San Carlos to San Francisco, and 13 cents per hundred pounds from San Francisco to Sacramento. The total amount collected was forty-three and 20/100 ($43.20) dollars.

Complainant bases its right to reparation upon a subsequent voluntary reduction in this rate made by the defendant company after a new and additional route had been opened between San Carlos and Sacramento. This new route is the Dumbarton cutoff, which is alleged to have been completed and opened for business September 8, 1910, two months prior to the date of the shipment involved in this case. No tariff was published over this new route, however, until March 1, 1911, four months subsequent to the date of the shipment involved in this case.

On March 1, 1911, defendant issued Supplement No. 11 to its G. F. D. Circular No. 199-B, C. R. C. 476, which supplement put into effect between San Carlos and Sacramento a rate of 13 cents per hundred pounds on carload shipments of machinery, with a minimum of 24,000

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pounds. This rate was made applicable on shipments moving either over the old route, via San Francisco, or over the new route, via Dumbarton Cutoff.

It appeared at the hearing that the actual route taken by the shipment in question was not known. The complainant's contention, therefore, is that the mere voluntary reduction of the rate from 18 cents to 13 cents establishes *per se* that the prior rate of 18 cents was excessive and unreasonable, and complainant accordingly seeks reparation to the amount of this reduction. This Commission can see no merit in this contention. The Interstate Commerce Commission has stated its view upon this identical question as follows:

> *Stockyards, etc.*, vs. *M. K. & T. R. R.*, 17 I. C. C. 295.
>
> "We have said many times the voluntary reduction of a rate by a carrier, with no other evidence of its unreasonableness except the fact that a lower rate is at present in existence, does not present a case where reparation should be awarded."
>
> *Foster Lumber Company* vs. *A. T. & S. F. Ry. Co.*, 15 I. C. C. 56.
>
> "It must be apparent that it is to the interest of the shipping public in no wise to embarrass carriers in decreasing rates when they think such decrease equitable. Under existing standards, all will admit that there must be a wide divergence of opinion as to what a reasonable rate between two points may be, and any policy pursued by this Commission tending to make it burdensome to the carriers to reduce a rate would in the end work a hardship to shippers."

We have already, in Case No. 260, *Henderson-Longton* vs. *Southern Pacific Company*, expressed our approval of the view taken by the Interstate Commerce Commission.

No facts, other than the voluntary reduction of the rate, were presented by complainant in this case to establish the unreasonableness of the rate as it stood prior to the reduction.

We are of the opinion, therefore, that the claim presented by the Clark & Henery Construction Company in this case should be denied, and submit herewith the following form of order:

ORDER.

The Clark & Henery Construction Company having presented to this Commission a claim of reparation to the amount of twelve ($12) dollars, for an alleged excessive charge made by the Southern Pacific Company on a carload shipment of machinery from San Carlos to Sacramento, on November 7, 1910, and a formal hearing having been duly held thereon, and the Commission being of the opinion that the claim for reparation presented in this case should be denied,

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It is hereby ordered that the claim for reparation presented by the Clark & Henery Construction Company in this case be and the same hereby is denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of October, 1912.

DECISION No. 304.

IN THE MATTER OF THE APPLICATION OF COAST VALLEYS GAS AND ELECTRIC COMPANY AND KING CITY WATER, LIGHT AND POWER COMPANY FOR AN ORDER AUTHORIZING SAID KING CITY WATER, LIGHT AND POWER COMPANY TO SELL TO SAID COAST VALLEYS GAS AND ELECTRIC COMPANY ALL OF THE PROPERTY BELONGING TO SAID KING CITY WATER, LIGHT AND POWER COMPANY.

Application No. 229.

Decided October 28, 1912.

A public utility corporation having heretofore been permitted to purchase all of the capital stock of another such corporation, *held*, that public convenience and necessity will be served by permitting the transfer of property of the vendor to the vendee.

Chickering & Gregory, for applicants.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

The Coast Valleys Gas and Electric Company applies to buy and the King City Water, Light and Power Company applies to sell all the property of the latter company. This property consists mainly of a steam electrical plant and distribution system in King City, Monterey County, California. Heretofore the Coast Valleys Gas and Electric Company was permitted to purchase all of the stock of the King City Water, Light and Power Company. (See Application No. 9.) No one appeared in opposition to the granting of the application, and, under the circumstances of the case, I believe that we should permit the trans-

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fer of the property. Under ordinary circumstances it is desirable where one utility owns all of the stock of another, that the ownership of the property should also be acquired by the utility owning the stock, and thus avoid unnecessary duplication in the management of the property. There may be cases where the Commission would not permit a sale of the property, even where the company desiring to purchase owned all the stock of the company desiring to sell. If the company desiring to purchase should be in a bad condition financially and the sale would extend the lien of the bonded indebtedness of the company desiring to buy over the property to be purchased, as would ordinarily be the case, it might be inadvisable to permit the formal transfer of the property. Under the circumstances of this case, however, I find that such a condition does not exist. The transfer, as far as the utilities are concerned, being a mere *pro forma* proceeding, and, the Coast Valleys Gas and Electric Company having heretofore paid an adequate purchase price for the stock of said company, the question of the amount of consideration for the transfer of the property becomes immaterial, and I find that public convenience and necessity will be served by allowing the transfer to be made, and I therefore recommend the following order:

ORDER.

Coast Valleys Gas and Electric Company having applied to purchase and the King City Water, Light and Power Company, having applied to sell the following described property:

1. All that certain piece or parcel of land situate, lying and being in the town of King City, county of Monterey, State of California, bounded and particularly described as follows, to wit: Commencing at the southwest corner of lot numbered two (2) and running thence in a northerly direction along the easterly line of Second street two hundred fifty (250) feet; thence at right angles in an easterly direction three hundred seventy-three (373) feet; thence at right angles in a southerly direction two hundred fifty (250) feet; thence at right angles in a westerly direction three hundred seventy-three (373) feet to the point of beginning, and being the southern portion of lot number two (2) as shown and designated on map of Burbank and Devendorf Villa Lot Addition to the town of King City, county of Monterey, State of California, and on file and of record in the county recorder's office of the aforesaid Monterey county; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

2. A steam plant for the generation of electricity, with the engines, boilers, generators and all other equipment therein, and all of which is

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now situate in the corrugated iron building upon the lot of land hereinbefore specifically described.

3. A well and induction pump in the said King City, and an elevated wooden tank.

4. A local distributing system for electricity and also water in said King City.

5. All franchises, permits, rights of way, and privileges and all other property of every kind and nature belonging to the said party of the second part or in which it has any interest, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

And a hearing having been held, and basing its order on the findings of fact set out in this opinion and order,

It is hereby ordered that the applicant, the Coast Valleys Gas and Electric Company, be permitted to purchase all of the above described property from the King City Water, Light and Power Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of October, 1912.

DECISION NO. 305.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY TO SELL AND LEASE AND THE CITY OF SAN DIEGO TO PURCHASE AND LEASE PROPERTY OF THE SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY.

Application No. 169.

Decided October 28, 1912.

Approving the stipulation required in the original order to be filed by the parties herein.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

SUPPLEMENTAL OPINION.

This case was decided on September 12, 1912, and the sale and lease of the property involved approved, with certain conditions precedent.

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An agreement and stipulation designed to bring about the results desired by the Commission have been filed with the Commission, and I am of the opinion that the sale and lease should be finally approved at this time.

I therefore recommend the following order:

ORDER.

Whereas the Commission on the 12th day of September, 1912, decided this application and approved the sale and lease of the property of the Southern California Mountain Water Company, described in the decision, on certain conditions precedent, which conditions read as follows:

"(*a*) The agreement of lease of June 5, 1912, shall be so modified that the city shall be granted at all times control of both the operation and maintenance of all of the so-called Coronado pipe line owned by the company from its junction with the main pipe line of the company between the lower Otay reservoir and the Chollas Heights reservoir, to the point of junction with the system owned by the Coronado Water Company, during the life of said lease. If hereafter said city shall exercise its option to purchase under said agreement, then said option to purchase shall be exercised contingent upon an arrangement being entered into between said company and said city, whereby at all times the city shall have such use of said Coronado pipe line as is necessary and convenient in performing any duty to the public owed by the company and assumed by the city, either by express assumption or by operation of law. If said lease is terminated by any cause other than the purchase by the city, then in that event the city shall for a reasonable rental permit the use of its facilities from the Barrett dam site to the junction of the Coronado pipe line, to the extent that is necessary for the conveyance from the leased system of the company to the head of the Coronado pipe line of sufficient water to furnish all lawful demands upon said pipe line; or at its option the city may furnish such lawful demands from its own supply into the said Coronado pipe line.

"The intent of this condition is to insure under all conditions of ownership the supplying of all lawful demands upon the Coronado pipe line. While in the absence of other arrangements between the company and the city which will in the opinion of the Commission bring about the same result, this condition will be strictly adhered to and enforced, still on an agreement between the company and the city being presented different in terms herefrom but equally or better adapted in the opinion of this Commission to bring about the desired result, an order will be entered modifying this condition in accordance therewith.

"(*b*) A stipulation shall be filed in this case by resolution of the common council of the city, approved by the mayor and city

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attorney, counsel herein, to the effect that the city takes the property of the company, understanding that any legal claim for water which may be enforced against the company may likewise be enforced against the city. The intent of this condition is, that the city shall not raise in any proceeding the point that the mere fact of this transfer has served to change the legal status of the property with reference to its public duties and charges. This stipulation not in any wise morally or legally to bind the city against contesting any claim against the system except on the one ground stated, namely, that the fact of transfer affects the status of the property to such a degree that valid claims against the system in the hands of the company become invalid by reason of the transfer to the city."

And whereas said company and said city have modified their agreement of June 5, 1912, in such a way as to bring about the result desired to be accomplished by the said conditions precedent, and on the 23d day of September, 1912, the board of directors of the said Southern California Mountain Water Company adopted a resolution, and on the 7th day of October, 1912, the common council of the said city of San Diego adopted an ordinance approved on the 9th day of October, 1912, entering into and providing for the execution of an agreement in words and figures as follows:

"*This indenture,* made this____day of_____, in the year of our Lord one thousand nine hundred and twelve, between the Southern California Mountain Water Company, a corporation organized and existing under and by virtue of the constitution and laws of the State of California, with its principal place of business in the city of San Diego, county of San Diego, State of California, hereinafter designated as the lessor, and the city of San Diego, a municipal corporation organized and existing under and by virtue of the constitution and laws of the said State of California, with its principal place of business in the said county of San Diego, hereinafter designated as the lessee, *witnesseth:*

"WHEREAS an agreement dated on the fifth day of June, 1912, has been entered into between the said parties hereto, wherein and whereby it is provided that the said lessor should sell to the said lessee, and the said lessee should purchase from the said lessor, certain property therein described for the sum of two million and five hundred thousand dollars, and also provided that the carrying out of the conditions therein contained on the part of the said lessee should be subject to the submission of the proposition of incurring the indebtedness therein contemplated on the part of the said lessee, and that bonds of the said lessee should issue for the payment of the said indebtedness, to the electors of the said city of San Diego, as provided by law, for authority to incur said indebtedness and to issue said bonds; and,

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"WHEREAS the question of incurring said indebtedness and of issuing said bonds was duly and regularly submitted to the electors of said city of San Diego at an election duly called and held in the said city of San Diego on the 15th day of August, 1912, at which election the electors of said city by their votes duly authorized the incurring of said indebtedness and the issuance of said bonds; and,

"WHEREAS said agreement also provides that in the event that the electors of said city should authorize the incurring of said indebtedness for said purpose and the issuance of bonds therefor, as in said agreement provided, and that said property should be purchased and acquired by the said city of San Diego, that the said lessor would, at the time of the conveyance of the said property to the said city of San Diego and the receipt by the said lessor of the said sum of two million and five hundred thousand dollars, enter into an agreement with the said lessee, by the terms of which the said lessor would lease to the said lessee, for a period of ten years, the property designated by said agreement to be leased by the said lessor to the said lessee, upon the terms and conditions as in said agreement set forth:

"*Now, therefore,* for the purpose of complying with the terms and conditions of said agreement dated on the said 5th day of June, 1912, the said lessor herein, for and in consideration of the rents and the performance of the covenants herein contained, on the part of the said lessee, in the manner hereinafter stated, hereby demises, leases and lets unto the said lessee the following described property, situated in the said county of San Diego, State of California, to wit:

"All the water rights of the said lessor on the stream of the Cottonwood Creek above and east of the Barrett reservoir site; also the Morena reservoir and Morena dam, including all lands in the Morena reservoir and Morena reservoir site, and adjoining lands, together with the right to catch, store and impound water therein, and to take, use and draw from the said Morena reservoir and Morena dam, during said period of ten years, all water which may flow into, or become impounded in, or flow through, said Morena reservoir and Morena dam, together with the right to use the natural bed of the Cottonwood Creek as an aqueduct, from the said Morena dam to the easterly edge of the said Barrett reservoir site; also the right to use all wagon roads and telephone lines upon said property and used in connection therewith (subject to the use of such telephone lines by the Jamul ranch at a reasonable rental) for and at the annual rental of sixty-seven thousand and five hundred dollars, to be paid in twelve equal monthly installments of five thousand six hundred and twenty-five dollars each, on or before the tenth day of each month, at the city hall of the city of San Diego, in warrants of the said city of San Diego drawn upon the proper fund of said city of San Diego, for the use and rental of said property for the preceding month, during said term; provided, that the said city of San Diego shall maintain and keep all of said property and the

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fences and buildings thereon in good repair and condition, at its own expense, and make all repairs and replacements necessary, to the end that said property will, during said term, be kept and be returned to the said lessor, said Southern California Mountain Water Company, at the end of said term, in as good condition as when received by said lessee, the city of San Diego, reasonable wear and damages by the elements, excepted; and that the said lessee, the city of San Diego, shall not underlet or sublet any part or portion of said property, or assign this lease of the same, or make any alterations or improvements therein, without the consent of the said lessor, the Southern California Mountain Water Company, having been first had and obtained in writing; also, provided, that no cattle, horses, hogs, burros, or other stock, shall be pastured upon or within said Morena reservoir site, or within the fence enclosing the same, and neither shall said Morena reservoir site be used for camping purposes, and said reservoir and reservoir site shall, during all of said term, be kept free from brush, second-growth, driftwood and other obstructions by the said lessee, and the water therein shall be kept free from algæ, and other impurities by said lessee, so that said water shall be fit for domestic use at all times during said term. The said land to be so leased is more particularly described as follows, to wit: Lots numbered one to forty-eight, both inclusive, as described and designated on that certain map and schedule, marked 'Exhibit A,' and made a part of that certain instrument, executed by the said lessor, and filed in the office of the city clerk of the said city of San Diego on the 14th day of February, 1912, and numbered Document 48806, a copy of which map and schedule, marked 'Exhibit A,' is hereto attached, marked 'Exhibit One,' and hereby made a part of this instrument.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, for the purpose of carrying out the terms of said agreement dated on the said 5th day of June, 1912, between the said parties hereto, that the said lessor shall, and the said lessor does hereby give and grant to the said lessee, the said city of San Diego, the option, right and privilege to purchase, and of purchasing, all of the said lessor's, the said Southern California Mountain Water Company's, water rights in the stream of the Cottonwood Creek, above and east of the Barrett reservoir site; also the Morena reservoir and Morena dam, and the water impounded therein, together with the right to catch, store and impound water therein, and to take, use and draw from the said Morena reservoir and Morena dam, all water which may flow into, or become impounded in, or flow through, said Morena reservoir and Morena dam, together with the right to use the natural bed of the Cottonwood Creek as an aqueduct from said Morena dam to the east line of the said Barrett reservoir site, at any time within ten years from the date of this lease, for the sum of one million and five hundred thousand

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dollars. Said land for which the said option, right and privilege of purchasing is given is more particularly described as follows, to wit: Being the said lots numbered from one to forty-eight, both inclusive, as described and designated on the said map and schedule, marked 'Exhibit A,' attached to said document numbered 48806 and filed in the city clerk's office on the 14th day of February, 1912, containing three thousand two hundred and ninety-six and seventy-seven hundredths acres of land, a copy of said map and schedule being hereto attached, marked 'Exhibit One' and hereby made a part hereof; the said option, right and privilege to purchase, and of purchasing, said property, being subject to the purchase of the property described in said agreement dated June 5th, 1912, for the sum of two million and five hundred thousand dollars, as in said agreement specified, and to the payment of the annual rental of sixty-seven thousand and five hundred dollars, as in said agreement, and herein, provided.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, that should the said city of San Diego not exercise its option, right and privilege to purchase, and of purchasing, the said property within the said period of ten years, then the said lessee, said city of San Diego, shall, at the expiration of this lease, surrender the possession of all of the property described in this lease to the said lessor, the said Southern California Mountain Water Company, or its successor or assigns, and nothing in this lease shall impair any of the rights of the said lessor, the said Southern California Mountain Water Company, which it now has to any of said property described in this lease, which the said lessor leases to the said lessee, or to sell or dispose of all water caught or impounded in said Morena reservoir, for either consumption or power, and the said lessee, said city of San Diego, shall, on demand, grant rights of way to the said lessor, said Southern California Mountain Water Company, over its properties so acquired from the said Southern California Mountain Water Company under said agreement dated June 5, 1912, for aqueducts, conduits, wagon roads, the transmission of power, and telephone lines, if requested to do so by the said lessor, said Southern California Mountain Water Company, or its successor or assigns; provided, the same shall not conflict in any way either with then existing or proposed works of the said lessee, said city of San Diego.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, that the said city of San Diego shall be, and is hereby released from its present contract to furnish water to the said city of San Diego, dated on the 11th day of December, 1905, and that both the said city of San Diego and the said Southern California Mountain Water Company shall be, and they are hereby, released from all obligations one to the other under said contract dated on the 11th day of December, 1905, except the payment of

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any bills for water which has been furnished by the said Southern California Mountain Water Company to the said city of San Diego, and which have not been paid.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, that the possession of all the property described in this lease, to be leased by the said lessor, said Southern California Mountain Water Company, to the said lessee, said city of San Diego, by the terms hereof, shall be delivered by the said lessor to the said lessee on the same day that the possession of the property to be purchased by the said city of San Diego for two million and five hundred thousand dollars is delivered to the said city of San Diego.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, that the said lessor, said Southern California Mountain Water Company, shall pay all state and county taxes, or other assessments levied upon the property hereby leased by the said lessor to the said lessee, during the term of this lease, or until said property has been purchased by said city of San Diego as herein provided.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, that if any rent shall be due and unpaid for a period of thirty days, or if default be made in any of the covenants herein contained to be kept and performed and observed on the part of the said lessee, then it shall be lawful for the said lessor to re-enter the said premises and to remove all persons therefrom, and to terminate this lease.

"*It is hereby further agreed,* by and between the said lessor and the said lessee, that the said lessee shall pay the said rent as herein specified, and that at the expiration of said term, or sooner expiration of this lease, the said lessor shall quit and surrender the said property in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted, in the event that the said lessee does not exercise said option to purchase said property, and the said lessor does hereby convenant, promise, and agree, that the said lessee paying said rent and performing the covenants contained herein to be performed by it, shall and may peaceably and quietly have, hold and enjoy the said property for the term aforesaid.

"*It is hereby further agreed,* by and between the said parties hereto, that the words 'San Diego Pipe Line,' as used in this instrument, shall mean the main pipe line running from the Lower Otay dam to the city of San Diego, and that the words 'Highland Reservoir Pipe Line' shall mean the pipe line running from the said 'San Diego Pipe Line' to a connection with the pipe line of the Coronado Water Company, at a point about three thousand nine hundred and seventy-nine feet west of the Highland reservoir.

"*It is hereby further agreed,* by and between the said parties hereto that as the city of San Diego is to acquire immediately the

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control, by purchase, of all that portion of the system of waterworks of the said Southern California Mountain Water Company to be sold to the said city of San Diego for two million and five hundred thousand dollars, as provided in said agreement dated June 5, 1912, and that said city of San Diego is also to acquire immediately the control, by lease, of all the property of the Southern California Mountain Water Company provided by said agreement, dated June 5, 1912, to be leased by the Southern California Mountain Water Company to said city, and that the said 'Highland Reservoir Pipe Line' is to be retained by the said Southern California Mountain Water Company, and that it is the intention and understanding of the parties hereto that all lawful demands for water from said 'Highland Reservoir Pipe Line' shall be supplied from said system of waterworks, and through said 'Highland Reservoir Pipe Line,' the same as if said city of San Diego had not acquired the possession and control of said property, and the same as though the Southern California Mountain Water Company was to retain the ownership and control of the whole of said system of waterworks, it being the intention of the parties hereto that the said city of San Diego shall furnish and deliver, at the junction of the said 'San Diego Pipe Line' and said 'Highland Reservoir Pipe Line,' the same amount of water for the consumers of water from said 'Highland Reservoir Pipe Line' that the said Southern California Mountain Water Company would have been required to have furnished and delivered at said point, if said transfer and lease had not taken place, and that when said water shall have been so delivered at said point by said city of San Diego, the said Southern California Mountain Water Company shall distribute the same to the consumers of water under said 'Highland Reservoir Pipe Line,' the same as if said transfer and lease had not taken place;

"*Now, therefore,* for that purpose and to that end, the city of San Diego hereby promises, covenants and agrees to deliver to the Southern California Mountain Water Company, at the junction of the said 'San Diego Pipe Line' and the said 'Highland Reservoir Pipe Line,' for the purpose of supplying the consumers of water from the said 'Highland Reservoir Pipe Line' with the same amount of water that the Southern California Mountain Water Company would have been required to have furnished and delivered at said point, if said transfer and lease had not been executed, and the said Southern California Mountain Water Company hereby promises, covenants and agrees to deliver and distribute said water by and through the said 'Highland Reservoir Pipe Line' to the consumers of water from said 'Highland Reservoir Pipe Line,' the same as if said transfer and lease had not been executed, and the whole of said system of waterworks had been retained by the said Southern California Mountain Water Company, and hereby further

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promises and agrees to keep and maintain said 'Highland Reservoir Pipe Line' in good repair and condition at all times for that purpose. The intention of this agreement is to insure under all conditions of ownership of said system of waterworks the supplying of all lawful demands upon the said 'Highland Reservoir Pipe Line.'

"The terms and conditions under which said water shall be furnished and delivered by said city of San Diego to the said Southern California Mountain Water Company, for the purpose of supplying said consumers with water from the said 'Highland Reservoir Pipe Line,' shall be as follows:

"The said city of San Diego, for and in consideration of the covenants and agreements on the part of the said Southern California Mountain Water Company, hereinafter contained, agrees that it will sell and deliver to the said Southern California Mountain Water Company, and the said Southern California Mountain Water Company agrees that it will buy of and from the said city of San Diego, all the water which the said Southern California Mountain Water Company may require to furnish and supply all the demands of its present consumers now being furnished with water from said Highland Reservoir pipe line, for the full period of ten years from the date of this instrument, at and for the sum of eight cents per one thousand gallons, and after the end of said ten years said water shall be furnished at such rate as the said parties hereto may agree upon, or, if unable to agree upon such rate, then at such rate as shall be fixed by arbitration, as hereinafter provided, or at such rate as shall be fixed by lawful authority in existence at that time, and that such rate of eight cents per one thousand gallons shall commence immediately upon the delivery of the water by the said city of San Diego to the said Southern California Mountain Water Company at the junction of the said San Diego pipe line and the said Highland Reservoir pipe line, said water to be paid for by the said Southern California Mountain Water Company on or before the tenth day of each and every month for the water furnished during the preceding month.

"*It is hereby further agreed*, by and between the said parties hereto, that the said water to be so furnished by the said city of San Diego to the said Southern California Mountain Water Company shall be measured at the point of delivery where the said Highland Reservoir pipe line joins the said San Diego pipe line, by a Venturi meter, or other water meter equally as good, which shall be furnished and placed at the expense of the said city of San Diego, and shall be by it maintained, and that the water shall be delivered to the said Southern California Mountain Water Company at said point, and that said water shall commence to be so delivered when the said property to be so purchased by said city

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of San Diego for two million and five hundred thousand dollars is delivered to the said city.

"*It is hereby further agreed,* by and between the said city of San Diego and the said Southern California Mountain Water Company, that should any question arise at any time between the said city of San Diego and the said Southern California Mountain Water Company, as to whether or not said meter is registering correctly the amount of water furnished as aforesaid, that either of the said parties hereto shall have, and they are hereby given, the right to test said meter in any manner which to it or its agents or employees may seem advisable, for the purpose of ascertaining whether or not it is correctly registering and measuring the water passing through it, and that either party hereto may place an air valve, or any other contrivance or mechanism, upon said meter and make any connection with the water pipe attached to said meter that may be deemed advisable for the purpose of determining such question, and that in the event that either of the parties hereto shall not be satisfied with the registration of said meter, then the matter may be submitted to arbitration as in this contract hereinafter provided, and the decision of such arbitrators shall be final as to the amount of water actually delivered through said meter, and if it be found that the said city of San Diego has been delivering more water than it has been paid for, the said Southern California Mountain Water Company shall pay for the same, and if the said Southern California Mountain Water Company has been paying for more water than it has been receiving, the said city of San Diego shall make a complete reimbursement therefor; provided, that no payment shall be made for water delivered more than three months prior to such award, and that the said Southern California Mountain Water Company shall not collect any reimbursement for payments made more than three months prior to such award.

"*It is hereby further agreed,* by and between the said parties hereto that in the event that there shall be a shortage of water at any time in the reservoirs of the said city of San Diego, on account of lack of rainfall, or otherwise, that the water furnished by the said city of San Diego to all its consumers shall be equitably apportioned among all its consumers, to the end that the said Southern California Mountain Water Company shall have and receive for the use of its consumers under the said Highland Reservoir pipe line, the same equitable proportion of the water impounded in the reservoirs, and subject to use, as the said city of San Diego, and its consumers receive, and in the event that the said Southern California Mountain Water Company is not satisfied with the amount of water delivered to it for such purpose, such question shall be settled by arbitration, as hereinafter provided.

"*It is hereby further agreed,* by and between the said parties hereto that this contract is to be a continuing contract, for the pur-

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pose of supplying the persons now being supplied with water by the said Southern California Mountain Water Company from the said Highland Reservoir pipe line, without any limitation as to the time when such obligation to furnish water shall cease, and that the only changes to be made herein are as to compensation to be paid and received for such water, as herein provided.

"*It is hereby further agreed*, that the said city of San Diego shall not be responsible for any impairment of its ability to do any of the things in this agreement undertaken to be done by it in so furnishing said water, if such impairment is caused by the act of God, or by the law, by which it is enjoined or prevented from doing any such things, or enjoined or prevented from securing the necessary funds or money wherewith to do the same, or by the act of the public enemy or any unavoidable casualty to any part or portion of its water system, and that the said city of San Diego shall not be responsible for any damage caused by any deficiency of water, or in the furnishing thereof, occasioned by any of the above causes.

"*It is hereby further agreed*, by and between the said parties hereto that whenever in this contract water is spoken of to be furnished by the said city of San Diego to the said Southern California Mountain Water Company, it is understood to imply pure, fresh, wholesome water, fit and proper for domestic use.

"*It is hereby further agreed*, that whenever any matter of dispute arises under this contract in regard to the furnishing of water by the said city of San Diego to the said Southern California Mountain Water Company, for supplying the consumers under the said Highland Reservoir pipe line with water, that such dispute may be settled by arbitration, and that such arbitration shall be had and arbitrators chosen in the following manner: The said city of San Diego shall appoint one arbitrator and the said Southern California Mountain Water Company shall appoint a second arbitrator, and if the two arbitrators so chosen are unable to agree, they shall appoint a third arbitrator, and the decision of the majority shall be the decision of the Board of Arbitrators; provided, that in the event that either of the said parties shall fail or neglect to appoint an arbitrator when requested so to do by the other party, or in the event that the two arbitrators so appointed shall fail or neglect to appoint or be unable to agree upon the third arbitrator, then in either or both of said events the judge of department one of the Superior Court of the county of San Diego, State of California, shall have power to make such appointments, and the board of arbitrators thus constituted shall have all the powers of a board regularly appointed, as provided in this agreement, and the decision of a majority of such board shall be final and binding upon the parties hereto.

"*It is hereby further agreed*, by and between the said parties hereto, that this agreement shall be binding upon the successors and assigns of the respective parties hereto.

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"*In witness whereof,* the said Southern California Mountain Water Company, by a resolution duly adopted at a regular meeting of its board of directors, at which a quorum was present, has caused these presents to be executed, for and on its behalf, in its name, and as its act and deed, by its president, and to be attested by its secretary by affixing thereto his name and the corporate seal of the said Southern California Mountain Water Company, this 23d day of September, 1912.

SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY,
By _____
President of the Southern California
Mountain Water Company.

Attest:

_____
Secretary of the Southern California
Mountain Water Company.

"*In witness whereof,* the said city of San Diego has, by an Ordinance duly adopted at a regular meeting of the common council of the said city of San Diego, at which a quorum was present, caused these presents to be executed, for and on its behalf, in its name, and as its act and deed, and to be attested by the city clerk of the said city of San Diego by affixing thereto his name and the corporate seal of the said city of San Diego this 9th day of October, 1912.

THE CITY OF SAN DIEGO,
By _____
Mayor of the City of San Diego.

Attest:

_____
City Clerk of the City of San Diego and ex officio
Clerk of the Common Council of the City of San Diego."

And whereas said company and said city have entered into a stipulation in the following form:

"BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Application No. 169.

"*In the Matter of the Application of the Southern California Mountain Water Company to sell and lease and the City of San Diego to purchase and lease property of the Southern California Mountain Water Company.* } Stipulation.

"*It is hereby stipulated and agreed* by and between the Southern California Mountain Water Company and the city of San Diego, that the said city of San Diego takes the property of the Southern California Mountain Water Company with the understanding that any legal claim for water which may be enforced against the

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Southern California Mountain Water Company may likewise be enforced against the city of San Diego.

"The said city of San Diego hereby stipulates and agrees not to raise in any proceeding the point that the mere fact of this transfer has served to change the legal status of this property with reference to its public duties and charges.

"It is hereby further agreed and understood by and between the said parties hereto that this stipulation shall not in any wise, morally or legally, bind the city of San Diego against contesting any claim against the system, except on the one ground stated, namely, that the fact of transfer affects the status of the property to such a degree that valid claims against the system in the hands of the Southern California Mountain Water Company become invalid by reason of the transfer to the said city of San Diego.

"This stipulation has been executed pursuant to a resolution adopted by the common council of the said city of San Diego, approved by the mayor and the city attorney of said city of San Diego, counsel herein, a copy of which resolution is in the following words and figures, to wit:

RESOLUTION No. 11977.

"WHEREAS an opinion has been rendered by the Railroad Commission of the State of California, in the matter of the application of the Southern California Mountain Water Company to sell and lease, and the city of San Diego to purchase and lease property of the Southern California Mountain Water Company, being Application No. 169, in which opinion it is stated that 'a stipulation shall be filed in this case by resolution of the common council of the city, approved by the mayor and city attorney, counsel herein, to the effect that the city takes the property of the company, understanding that any legal claim for water which may be enforced against the company may likewise be enforced against the city. The intent of this condition is, that the city shall not raise in any proceeding the point that the mere fact of this transfer has served to change the legal status of the property with reference to its public duties and charges. This stipulation not in any wise morally or legally to bind the city against contesting any claim against the system except the one ground stated, namely, that the fact of transfer affects the status of the property to such a degree that valid claims against the system in the hands of the company become invalid by reason of the transfer to the city.'

"Now therefore, be it

"*Resolved by the Common Council of the City of San Diego,* as follows:

"That the city of San Diego prepare, execute and file the stipulation provided for in said opinion, and for that purpose and to that end the city attorney of the city of San Diego be and he is for

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and on behalf, in the name and as the act and deed of the said city of San Diego, authorized to execute, deliver and file a stipulation in accordance with the said opinion, to the effect that the said city of San Diego takes the property of the Southern California Mountain Water Company, with the understanding that any legal claim for water which may be enforced against the said company may likewise be enforced against the said city. The intent of this condition is that the city shall not raise in any proceeding the point that the mere fact of this transfer has changed the legal status of the property with reference to its public duties and charges. This stipulation not in any wise, morally or legally, to bind the city against contesting any claim against the system, except on the grounds stated, namely, that the fact of the transfer affects the status of the property to such a degree that valid claims against the system in the hands of the Southern California Mountain Water Company become invalid by reason of the transfer to the said city of San Diego.

"Dated at San Diego, California, this 17th day of October, 1912.

HARRY L. TITUS,
H. E. DOOLITTLE,
READ J. DILWORTH,
Attorneys for the Southern California Mountain Water Company.
W. R. ANDREWS,
City Attorney of the City of San Diego,
Attorney for the City of San Diego."

And whereas the Commission is of the opinion that the carrying out of the said contract as modified and filed, and the observing of the stipulation as set out herein by the said company and the said city will comply in all substantial respects with the conditions precedent prescribed in the order of this Commission of September 12, 1912, therefore, *it is ordered:*

1. Permission is granted the company to sell and the city to purchase all of the property covered by the agreement of sale of June 5, 1912, and in accordance with the terms and conditions set out in said agreement hereinbefore set forth.

2. Permission is hereby granted to the company to lease and the city to take by lease all of the property covered by the agreement of June 5, 1912, as modified by the agreement between said company and said city hereinbefore set forth.

This order to become effective on the performance of the following acts:

(*a*) The filing of the original stipulation duly executed as set out herein.

(*b*) Upon the filing of a certified copy of the amended agreement

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of lease as set out herein, showing the same to be duly executed on the part of said City and said Southern California Mountain Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of October, 1912.

DECISION No. 306.

SAN MATEO COUNTY DEVELOPMENT ASSOCIATION
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 264.

Decided October 28, 1912.

Complaint against passenger rates dismissed upon stipulation from complainant that new rate schedules established by respondent were satisfactory.

Seth Mann, for Complainant.
C. W. Durbrow, for Defendant.
D. S. O'Brien, for City and County of San Francisco, intervenor.

REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners.*

This is one of the three cases known as the Peninsula Rate Cases, the other two being Case No. 266, brought by the Palo Alto Chamber of Commerce, and Case No. 270, brought by W. E. Bean, and affecting San Jose. The object of these three cases was to secure lower passenger rates between San Francisco and points on the Peninsula down to and including San Jose. On the day finally set for the hearing, being August 26, 1912, the complainants in these cases asked for a continuance of sixty days, for the reason that they were negotiating with the defendant and the defendant held out hopes of a satisfactory settlement without the necessity for further proceedings before the Commission. The case was accordingly adjourned until October 28, 1912, at which time the parties again appeared before this Commission. The San Mateo County Development Association filed with the Commission a stipulation reciting that the parties to the case had agreed upon passenger rates to be

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charged between the city of San Francisco and points in the county of San Mateo, which rates were attached to and made a part of the stipulation, and also that the parties desired that the rates become effective on November 1, 1912, and that the Commission shorten the statutory time of notice and make its order authorizing the rates to become effective on November 1, 1912, and stipulating that Case No. 264 be dismissed upon the filing of said rates by defendant, to become effective November 1, 1912, and upon the making of an order of this Commission dismissing the case. In Cases No. 266 and No. 270 the complainants likewise filed stipulations requesting the dismissal of the actions on the grounds that the respective causes had been settled.

Attached hereto and marked "Exhibit A" is a statement showing the distances between San Francisco and stations named, down to and including Menlo Park, and rates which have been submitted to the San Mateo County Development Association, and which the Southern Pacific Company has agreed to publish, effective November 1, 1912. The rates filed with this Commission by the Southern Pacific Company under its agreement with the parties complainant in all three cases are all constructed upon the same basis shown in said statement, which statement applies to San Mateo County alone. It appears from the agreed rates on file with this Commission that substantial reductions have been offered by the Southern Pacific Company in daily round trip, Sunday round trip, ten-ride bearer, thirty-ride family and individual monthly commutation tickets, and also that a new ticket, to be known as an individual monthly, except Sunday, commutation ticket has been provided.

In view of the substantial reductions which have been offered and of the desire of the complainants that these cases be dismissed, we recommend the dismissal of case No. 264, and that the proposed rates now filed with this Commission become effective on November 1, 1912, on less than statutory notice.

We submit herewith the following form of order:

ORDER.

Complainant in the above entitled case having filed with this Commission its written stipulation that said proceeding be dismissed upon the filing by defendant of the rates offered to be established by defendant and attached to the stipulation, to become effective November 1, 1912, and upon the making of an order of dismissal by this Commission, and it appearing to the Commission that substantial reductions in passenger fares have been proposed by defendant in said case,

It is hereby ordered that said case be and the same is hereby dismissed, and that the passenger rates so proposed by defendant and filed with this Commission be and the same are hereby made effective on November 1, 1912, on less than statutory notice.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of October, 1912.

Statement showing distances between San Francisco and stations named; rates that have been accepted by the San Mateo County Development Association and which the Southern Pacific Company has agreed to publish, effective November 1, 1912.

Miles	Stations.	Daily round trip.	Sunday round trip.	Ten-ride bearer.	Thirty-ride family.	Individual monthly commutation.	Individual monthly, except Sunday.
9.3	South San Francisco	40	35	165	420	300	----------
11.0	San Bruno	50	40	195	495	330	----------
12.1	Lomita Park	55	45	210	545	365	----------
13.7	Millbrae	60	50	240	615	410	----------
15.1	Easton	70	55	265	680	455	410
16.3	Burlingame	70	55	285	735	490	440
17.9	San Mateo	75	65	315	805	535	485
21.9	Belmont	95	80	385	985	655	590
23.2	San Carlos	95	80	405	1,045	695	625
25.4	Redwood	105	90	445	1,145	760	685
27.8	Atherton	115	95	485	1,250	835	750
28.9	Menlo Park	120	100	505	1,300	865	780

N. B.—The "Daily Round Trip" tickets are limited to two days, except they will be effective Saturday to Monday of each week. All rates apply both ways. All rates shown in cents.

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DECISION No. 307.

PALO ALTO CHAMBER OF COMMERCE
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 266.

Decided October 28, 1912.

S. W. Charles, for Complainant.
C. W. Durbrow, for Defendant.
D. S. O'Brien, for City and County of San Francisco, intervenor.

REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners.*

For the facts in this case, see this Commission's opinion in Case No. 264, *San Mateo County Development Association* vs. *Southern Pacific Company.*

We submit the following form of order:

ORDER.

Complainant in the case entitled as above having filed with this Commission its written request to dismiss the same, and it appearing to the Commission that the defendant has agreed to put into effect passenger rates to the points covered by the complaint in said proceeding substantially reducing the present passenger rates between said points and the city of San Francisco,

It is hereby ordered that said case be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of October, 1912.

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DECISION No. 308.

W. E. BEAN
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 270.

Decided October 28, 1912.

D. T. Jenkins, for Complainant.
C. W. Durbrow, for Defendant.
D. S. O'Brien, for City and County of San Francisco, intervenor.

REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners.*

For the facts in this case, see this Commission's opinion in Case No. 264, *San Mateo County Development Association* vs. *Southern Pacific Company.*

We submit the following form of order:

ORDER.

Complainant in the case entitled as above having filed with this Commission a written request to dismiss the same, and it appearing to the Commission that the defendant has agreed to put into effect passenger rates to the points covered by the complaint in said proceeding substantially reducing the present passenger rates between said points and the city of San Francisco,

It is hereby ordered that said case be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of October, 1912.

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DECISION NO. 309.

IN THE MATTER OF THE APPLICATION OF THE SANTA BARBARA AND SUBURBAN RAILWAY COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE CONSTRUCTION AND OPERATION OF A NEW STREET RAILROAD IN SANTA BARBARA UNDER A FRANCHISE GRANTED TO R. H. GAUD.

Application No. 248.

Decided October 29 1912.

Applicant asking for a certificate that public convenience and necessity require the complete reconstruction and modernizing, under a newly granted franchise, of the street railway system recently acquired by it, is granted request.

The Commission does not view with approval the plain and successful attempt, upon the part of applicant, to rush its incorporation, issue and disposition of stock, authorization and issue of bonds and disposition of a large amount of said bonds, through, before the effective date of the Public Utilities Act. The franchise granted by the city to applicant, with respect to the limitation therein imposed as to the age of school children who are allowed to ride at reduced fares, is too strict.

Harry J. Bauer, appearing for H. H. Trowbridge, for R. H. Gaud, and Santa Barbara and Suburban Railway Company.

W. P. Butcher, city attorney, for City of Santa Barbara.

Frank Smith, vice-president Chamber of Commerce, for Chamber of Commerce.

E. J. Boeseke, mayor of City of Santa Barbara.

J. B. Henck, representing himself, appearing in protest.

J. B. Henck, Mr. Fox, Mr. McKnight, city councilmen, City of Santa Barbara.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The hearing on this application was held in Santa Barbara, California, on the twenty-sixth day of October, 1912. The testimony shows the following state of facts to have existed and as now existing.

In the year 1897, there were organized two street railroad companies in Santa Barbara, one the Santa Barbara Street Railway Company with two and one half miles of track, the other the Citizens' Railroad Company with a trackage of four miles. A few years later these companies were merged under the name of the Santa Barbara Consolidated Railway and the ownership was taken over by the United Electric Gas and Power Company.

At a still later date, about 1903, the Southern California Edison

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Company of Los Angeles purchased the United Electric Gas and Power Company, and the ownership of the Santa Barbara Consolidated Railway Company by this purchase passed to the Southern California Edison Company.

When the roads were originally built, as it was intended to operate them with horses or mules, the construction as to preparation of roadbed, ties, ballast, etc., was light. The road was of a narrow gauge with light rails, and later when the mule cars were taken off and heavier electric cars installed it naturally developed that the road would not stand the strain and deterioration was rapid.

Interruption in the operation of the road caused by accidents and necessity for repaving the streets rendered it impossible for the road to pay interest on outstanding bonds, and the testimony shows that for several years past the earnings of the road have not been sufficient to pay judgments rendered against the road on account of damage suits, expenditures for street paving, and the interest on the bonds, to say nothing of any surplus for maintenance and depreciation.

Under these conditions, when further heavy expenses became necessary, the management of the Edison Company in the East instructed its local company to discontinue payment of interest on outstanding bonds. At this time several public-spirited residents of Santa Barbara and vicinity undertook a reorganization with a view to reconstruction and giving to Santa Barbara a well-equipped electric line.

Having interested other men of means, the Santa Barbara and Suburban Railway Company was incorporated with a capital stock of $500,000, divided into 500 shares of the par value of $1,000 each, all common stock.

Mr. R. H. Gaud, secretary of the reorganization committee, was instructed to apply, for the reorganization committee, to the common council of the city of Santa Barbara, California, for a franchise to construct, equip and operate an electric railroad as set forth in the petition upon which this hearing was held, which franchise was granted on July 18, 1912.

Under Application No. 249, R. H. Gaud has asked permission of this Commission to sell and convey said franchise to the Santa Barbara and Suburban Railway Company, which permission is granted as of this date.

The pleadings and testimony in this application show that a few days prior to the effective date of the Public Utilities Act, the Santa Barbara and Suburban Railway Company was incorporated with a capital stock of $500,000, all common stock; that all of said stock was issued and transferred to R. H. Gaud; that at the same time the Santa Barbara and Suburban Railway Company authorized two bond issues,

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one of $500,000, the bonds being of the par value of $1,000 each, maturing March 15, 1937, bearing interest 6 per cent per annum, and one of $163,000, represented by 326 bonds of the par value of $500 each, maturing March 15, 1942, bearing interest at the rate of 5 per cent per annum. Of the authorized issue of $500,000, $250,000 were issued, and the testimony shows that applicant, the Santa Barbara and Suburban Railway Company, now has the sum of $250,000 on hand to construct and equip the road. The whole amount of the second issue authorized, namely, $163,000 was issued and given to the holders of bonds which had formerly been issued by the Santa Barbara Street Railway Company, the Citizens' Railway Company, and the Santa Barbara Consolidated Railway Company, the Southern California Edison Company guaranteeing the interest on this issue of $163,000 for five years.

The Los Angeles Trust and Savings Bank of Los Angeles took both issues of bonds, taking as security a first mortgage for $500,000 for the $250,000 issued, said mortgage containing a stipulation that no further issue of bonds under the $500,000 worth authorized can be made until the net earnings for a period of twelve months preceding an application for further issue shall have been one and five eighths times the interest on outstanding bonds plus one and five eighths times the interest on the further issue applied for.

The mortgage or deed of trust also provides for a sinking fund to extend from 1915 to 1936 to amount yearly to 2 per cent of outstanding bonds. The issue of $163,000 is secured to the Los Angeles Trust and Savings Bank of Los Angeles by a second mortgage or deed of trust for $163,000, the interest of this issue for five years, as above stated, being guaranteed by the Edison Company.

It was clearly demonstrated at the hearing that in endeavoring to effect an organization which would insure the construction, equipment and operation of an up-to-date electric road in Santa Barbara, the bondholders of the companies which had formerly operated street railroad lines in Santa Barbara were shown that in the present dilapidated condition of the Santa Barbara Consolidated Railway line the company could not pay expenses and interest on its bonds, and such bondholders were induced to accept the bonds of the Santa Barbara and Suburban Railway in lieu of their holdings in the former companies upon the condition that the Edison Company guarantee interest for five years.

I believe that it is due to the Commission and to the public, by reason of the interest which the public has in the work of the Commission, to say that the Commission does not view with approval this plain and successful attempt upon the part of the Santa Barbara and Suburban Railway Company to rush its incorporation, issue and disposition of

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stock, authorization and issue of bonds and disposition of a large amount of said bonds, through, before the effective date of the Public Utilities Act.

Neither does it view with approval the thought that the $500,000 worth of stock, given to Mr. R. H. Gaud as a consideration for the transfer of the franchise procured by him from the city of Santa Barbara might possibly be sold to the public. The fact that the Santa Barbara and Suburban Railway Company has found it necessary to induce the Edison Company to guarantee the interest for five years on $163,000 of its bonds, issued under the second mortgage, would indicate that the prospect of stockholders receiving anything on their investment at an early date is remote.

This matter being brought up at the hearing, Mr. H. J. Bauer, attorney and witness for applicant, stated under oath that he was authorized by the directors of the Santa Barbara and Suburban Railway Company to stipulate with the Commission as one of the conditions of granting this order, that the $500,000 worth of stock of the Santa Barbara and Suburban Railway Company should not be sold to the public. The fact that applicant, the Santa Barbara and Suburban Railway Company, did incorporate, issue and dispose of its $500,000 capital stock, authorize a bond issue of $663,000 and issue $413,000 under such authorization, all of which was done just previous to the effective date of the Public Utilities Act, prevents the Commission from exercising authority over such acts of the company, but in view of Mr. Bauer's testimony that he was authorized to stipulate for the directors of the Santa Barbara and Suburban Railway Company that the stock of that company should not be sold to the public without further application to and order of the Commission, the Commission feels that in accepting such stipulation and making it a condition of this order it will be prepared at any future time, when application to sell such stock is made, to investigate and determine whether the earnings of the Santa Barbara and Suburban Railway Company will pay anything to stockholders after paying expenses, 2 per cent yearly to sinking fund and interest on bonded indebtedness.

While the Commission has no desire to criticise the franchise granted by the city of Santa Barbara to applicant, it desires to go on record at this time as believing that the limitation as to the age of school children who are allowed to ride at reduced fares is too strict, and that the age specified in other municipalities might well have been adopted.

Dealing with the situation as it is presented to the Commission, we find that the following conditions exist: The street railway in Santa Barbara is in a worn-out, run-down and dilapidated condition, wholly inadequate to the purpose it is supposed to serve. The Santa Barbara

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and Suburban Railway Company has received a franchise under which it has agreed to build, equip and operate an up-to-date electric road, and the testimony shows that it has the money for such construction and operation. The people of Santa Barbara are anxious to have the road built, and having been given an opportunity to vote on the matter, voted by almost three to one in favor of having it built. At the public hearing the city was represented by the mayor, E. J. Boeseke; W. P. Butcher, city attorney; Mr. Henck, Mr. Fox and Mr. McKnight, city councilmen. In addition to these there were present in the neighborhood of fifty of some of the representative men and women of Santa Barbara. Councilman J. B. Henck was the only person who had any objections or criticisms, and in justice to him it must be said that his criticisms ran more to the acts of the Santa Barbara and Suburban Railway Company in rushing its incorporation and its issue and disposition of stock and bonds through with what he regarded as too great haste than to anything else.

There is no question but what present and future public convenience and necessity require and will require the building and operation of the road, and while there are some features of this matter or rather some transactions which have been had in connection with it of which we do not approve, we feel that believing the interest of the public will best be served by permitting the Santa Barbara and Suburban Railway Company to exercise the rights granted by the franchise to R. H. Gaud, and in view of the forcibly expressed wish of the people of Santa Barbara, we feel that we should authorize the Santa Barbara and Suburban Railway Company to exercise its franchise rights to build, equip and operate the road.

I therefore recommend the following order:

ORDER.

Whereas Mr. R. H. Gaud has heretofore, to wit, on July 18, 1912, obtained from the city of Santa Barbara a franchise to construct, equip and operate an electric railway in the city of Santa Barbara; and

Whereas it is shown by the testimony in the hearing that said franchise was obtained by said Gaud for the use and benefit of the Santa Barbara and Suburban Railway Company; and

Whereas the Railroad Commission of the State of California, in passing upon Application No. 249, has authorized said R. H. Gaud to sell and transfer the said franchise to the Santa Barbara and Suburban Railway Company;

And it appearing that the Santa Barbara and Suburban Railway Company is financially able to construct, equip and operate said road, and that present and future public convenience require and will require such construction, equipment and operation;

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And it appearing further that the people of Santa Barbara, having been given an opportunity to vote on the proposition, have by a majority of almost three to one voted in favor of having the Santa Barbara and Suburban Railway Company build, equip and operate the road, and the Commission having found that present and future public convenience and necessity require and will require the construction, equipment and operation of said road, and Mr. H. J. Bauer, attorney for applicant, having stated at the hearing that he was authorized by applicant to stipulate that the stock of the Santa Barbara and Suburban Railway Company should not be offered or sold to the public without further application to and permission of this Commission; now, therefore,

Be it ordered that the Santa Barbara and Suburban Railway Company be, and it is hereby, authorized to construct, equip, and operate an electric railway in the city of Santa Barbara, California, and to exercise the franchise granted by the city of Santa Barbara to R. H. Gaud on July 18, 1912, and referred to in the application of the Santa Barbara and Suburban Railway Company to this Commission for such authorization.

It is further ordered that inasmuch as H. J. Bauer, attorney for applicant, evidenced his willingness to stipulate for the applicant and for R. H. Gaud that none of the $500,000 par value of stock heretofore transferred to R. H. Gaud should be hereafter sold without permission of this Commission having been secured authorizing such sale on the conditions which the Commission shall find just and proper;

It is hereby ordered that as a condition precedent to the permission granted herein to the applicant that said applicant and said R. H. Gaud file with this Commission a stipulation agreeing not to transfer any of said stock without the permission of this Commission, or upon the terms other than those imposed by said Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1912.

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DECISION No. 310.

IN THE MATTER OF THE APPLICATION OF R. H. GAUD AND THE SANTA BARBARA AND SUBURBAN RAILWAY COMPANY FOR AN ORDER AUTHORIZING SALE AND TRANSFER OF A FRANCHISE FOR A STREET RAILWAY IN THE CITY OF SANTA BARBARA, CALIFORNIA.

Application No. 249.

Decided October 29 1912.

Harvey J. Bauer, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application made under section 51 (*a*) of the Public Utilities Act by the Santa Barbara and Suburban Railway Company for permission to purchase and accept transfer of and by R. H. Gaud for permission to sell and transfer a certain franchise to construct, equip, and operate an electric street railway in the city of Santa Barbara, California, said franchise having been heretofore, to wit, on July 18, 1912, granted to said R. H. Gaud by the city council of said city of Santa Barbara, for the sum of $250. It appearing from the testimony that said R. H. Gaud procured said franchise for said Santa Barbara and Suburban Railway Company, and that said Santa Barbara and Suburban Railway Company is in condition financially to build, equip and operate the street railway, permission for the construction, equipment and operation of which is granted by said franchise, and that said R. H. Gaud is not in condition financially to exercise said franchise rights, and it appearing further:

That the interests of the public will best be served by granting permission to said R. H. Gaud to sell and transfer said franchise to said Santa Barbara and Suburban Railway Company and by permitting said Santa Barbara and Suburban Railway Company to purchase said franchise, I find that public convenience and necessity require and will require the granting of this application.

The pleadings do not show what the consideration for the transfer of the franchise from R. H. Gaud to the Santa Barbara and Suburban Railway Company is, but it developed at the hearing that the transfer of $500,000 worth of stock by the Santa Barbara and Suburban Railway Company to R. H. Gaud was regarded as the consideration for the transfer of the franchise from said Gaud to said railway company.

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I therefore submit the following order:

ORDER.

R. H. Gaud having filed with the Commission an application for permission to sell and transfer to the Santa Barbara and Suburban Railway Company, and the Santa Barbara and Suburban Railway Company having filed with the Commission its application for permission to buy and accept transfer from said R. H. Gaud for a certain franchise granted to said R. H. Gaud on July 18, 1912, by the city of Santa Barbara, California, and a public hearing having been held on said application, and it appearing that public convenience and necessity will be served by said sale and purchase of said franchise,

It is hereby ordered that said application be and the same is hereby granted, but it is especially understood and made a part of this opinion and order that any value which the stock of the Santa Barbara and Suburban Railway Company, given to said Gaud as the consideration for the transfer of this franchise by said Gaud to said Santa Barbara and Suburban Railway Company, has now or may hereafter have shall not be binding upon this Commission or any other rate-fixing body to be considered in the fixing of rates.

The foregoing opinion and order are hereby approved and ordered filed as the decision of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1912.

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DECISION NO. 311.

IN THE MATTER OF THE APPLICATION OF THE COAST COUNTIES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE PURCHASE OF ALL THE PROPERTY FORMERLY BELONGING TO THE DAVENPORT LIGHT AND POWER COMPANY NOW BELONGING TO THE RIDEOUT BANK, AND THE APPLICATION OF THE RIDEOUT BANK TO SELL SAID PROPERTY TO THE COAST COUNTIES GAS AND ELECTRIC COMPANY.

Application No. 232.

Decided October 29, 1912.

W. W. Kaufman, of Stratton, Kaufman & Torchiana, for Coast Counties Gas and Electric Company.

J. A. Ballentine, for Rideout Bank.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The Davenport Light and Power Company was incorporated for the purpose of serving electric energy for heat, light, power and such other purposes as electricity is used for to the people of part of Santa Cruz and Monterey counties. Its principal place of business was in the unincorporated town of Davenport, Santa Cruz County, California.

In the transaction of its business, the Davenport Light and Power Company borrowed from the Rideout Bank, a corporation with its principal place of business in Marysville, California, the sum of $2,380, giving its note for said amount with interest at 6 per cent. The note not being paid when due, the Rideout Bank thereafter brought suit against the Davenport Light and Power Company, received judgment and had an execution issued under which execution the property of the Davenport Light and Power Company, consisting of the distributing plant, distributing lines, secondary lines and meters, and other personal property, located in the village of Davenport, in the county of Santa Cruz, California, was sold by the sheriff of the said county to the Rideout Bank.

A copy of the bill of sale of the said sheriff, by which the property of the Davenport Light and Power Company was sold to the Rideout Bank, was filed with the Commission and made a part of the pleadings in this application.

The application further sets forth that the Rideout Bank is engaged

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exclusively in the business of banking and that it cannot operate the said Davenport Light and Power Company in the general line of its own business; and applies for permission to sell said Davenport Light and Power Company.

That the said Coast Counties Gas and Electric Company has heretofore furnished the Davenport Light and Power Company with electric energy, and is prepared to furnish a much better service to the patrons of the Davenport Light and Power Company than the Rideout Bank possibly can, and applies for permission to purchase said company.

A financial statement of the Coast Counties Gas and Electric Company is on file with the Commission showing that it is in position to take over and conduct the business of the Davenport Light and Power Company to the advantage of the patrons thereof, and I therefore find that present and future public convenience and necessity require and will require that the Coast Counties Gas and Electric Company be authorized to buy, and the Rideout Bank be authorized to sell to the Coast Counties Gas and Electric Company the property formerly belonging to the Davenport Light and Power Company.

I recommend the following order:

ORDER.

Whereas the property of the Davenport Light and Power Company has been sold under execution to the Rideout Bank; and

Whereas the Rideout Bank is in the banking business and does not desire to continue business of the Davenport Light and Power Company; and asks to be authorized to sell same to the Coast Counties Gas and Electric Company; and

Whereas the Coast Counties Gas and Electric Company is engaged in business similar to that conducted by the Davenport Light and Power Company, and is in condition to purchase and operate the said Davenport Light and Power Company to the advantage of the consumers of said company, and asks to be authorized to purchase the property of said company; and

Whereas the Commission finds that present and future public convenience and necessity require and will require the authorization of the sale and purchase of the property of the Davenport Light and Power Company as herein applied for; now, therefore,

Be it ordered that the Coast Counties Gas and Electric Company be and it is hereby authorized to buy the property of the Davenport Light and Power Company from the Rideout Bank, and the Rideout Bank be and it is hereby authorized to sell the property of the Davenport Light and Power Company to the Coast Counties Gas and Electric Company at the price agreed upon by said Coast Counties Gas and Electric Company and said Rideout Bank, to wit, $1,250, said property consisting

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of the distributing plant, distributing lines, secondary lines and meters and other personal property situate in the village of Davenport, the county of Santa Cruz, State of California, being all of the property of the said Davenport Light and Power Company which was sold to said Rideout Bank under execution by the Sheriff of said Santa Cruz County.

It is especially understood and made a part of this order that the price paid by the Coast Counties Gas and Electric Company to the Rideout Bank for the Davenport Light and Power Company shall not be binding upon this Commission or any rate-fixing body for rate-fixing purposes.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1912.

DECISION NO. 312.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR PERMISSION TO CONSTRUCT AT GRADE ITS LINE OF DOUBLE TRACK STREET RAILROAD ACROSS THE TRACK OF THE CALIFORNIA RAILWAY, AT THE INTERSECTION OF FOOTHILL BOULEVARD WITH COURTLAND AVENUE, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA.

Application No. 268.

Decided October 29, 1912.

REPORT OF THE COMMISSION.

San Francisco-Oakland Terminal Railways, a corporation, having on October 21, 1912, filed with the Commission its application for permission to construct, at grade, its line of double track street railroad across the track of the California Railway, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit from the city council of the city of Oakland, Alameda County, California, to construct its line of double track street railroad on Foothill boulevard and Courtland avenue, in the city of Oakland; and it further appearing that the former California Railway is one of the constituent corporations forming San Francisco-Oakland Terminal Rail-

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ways and that its track is now owned by the latter corporation; and it further appearing that it is not reasonable nor practicable to avoid grade crossings with said track and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted San Francisco-Oakland Terminal Railways to construct at grade its line of double track street railroad across the track of California Railway, at the intersection of Foothill boulevard with Courtland avenue in said city of Oakland, as shown by the map attached to the application, subject to the following conditions, viz.:

(1) Applicant shall construct said crossings in a good and substantial manner for the safe operation thereover of cars and trains.

(2) Applicant shall issue such rules and regulations governing the operation of cars and trains over the crossings as will insure their safe protection and the avoidance of accidents.

(3) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of October, 1912.

DECISION NO. 313.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS OF SHASTA COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT AT GRADE A "PRIVATE ROAD" ACROSS THE TRACK OF SOUTHERN PACIFIC COMPANY, ABOUT ONE (1) MILE SOUTH OF ANDERSON, SHASTA COUNTY, CALIFORNIA.

Application No. 243.

Decided October 29, 1912.

REPORT OF THE COMMISSION.

Board of supervisors of Shasta County, California, having on September 20, 1912, filed with the Commission its application for permission to construct a "private road" across the track of the Southern Pacific Company, as hereinafter indicated, said application being submitted in

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pursuance of section 2694, Political Code of California, as amended by chapter 35, special session 1911; and it appearing to the Commission that this is not a case in which a public hearing is necessary, that said crossing has been duly located by road viewers appointed by said board of supervisors, as shown by copy of report submitted of date September 6, 1912; that applicant has secured an easement for said crossing at grade across the right of way of Southern Pacific Company, as shown by copy of same filed with the Commission of date October 21, 1912; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said track and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted board of supervisors of Shasta County, California, to construct a "private road" at grade across the track of Southern Pacific Company at a point about one (1) mile south of the town of Anderson, Shasta County, California, at engineer's station 3389, as shown by the map attached to the application and subject to the following conditions, viz:

(1) The expense of constructing the crossing, including the necessary cattle guards and road crossing signs shall be borne by applicant.

(2) The expense of maintaining the crossing hereafter in good and first-class condition for the safe and convenient use of the public, for a distance of two (2) feet on each side of the rails, shall be borne by Southern Pacific Company. The expense of maintaining the approaches to said crossing, including the necessary culverts, if any, shall be borne by applicant.

(3) The crossing shall be constructed of a width not less than eighteen (18) feet and with grades of approach not exceeding ten (10) per cent, and shall be ballasted with broken stone or gravel ballast or other suitable material.

(4) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of October, 1912.

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DECISION NO. 314.

CITY OF BERKELEY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 282.

Decided October 31, 1912.

REPORT OF THE COMMISSION.

ORDER EXTENDING EFFECTIVE DATE.

Good cause appearing, it is hereby ordered that that portion of this Commission's order heretofore rendered on September 21, 1912, in the case entitled as above, specifying the time within which the passenger trains therein referred to shall stop at defendant's depot in Berkeley, be and the same is hereby extended to and including November 9, 1912.

Dated at San Francisco, California, this 31st day of October, 1912.

DECISION NO. 315.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR AUTHORTIY TO ISSUE ITS REFUNDING MORTGAGE FIFTY-YEAR GOLD BONDS UNDER ITS MORTGAGE DATED SEPTEMBER 1, 1911, TO THE AMOUNT OF FIVE MILLION TWO HUNDRED EIGHTY-FIVE THOUSAND DOLLARS FACE VALUE.

Application No. 219.

Decided November 2, 1912.

REPORT OF THE COMMISSION.

AMENDED ORDER.

It appearing that, by reason of an inaccurate statement in the application papers in the above entitled proceeding, the Los Angeles Interurban Railway Company's first mortgage gold bonds issued under and secured by its mortgage and deed of trust dated July 1, 1903, to the Union Trust Company of San Francisco, as trustee, maturing October

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1, 1943, were incorrectly stated as being dated April 1, 1903, instead of July 1, 1903, in the order filed by this Commission in the above matter on October 16, 1912; and it further appearing that applicant desires to have said order recite the dates of the respective mortgages or trust deeds referred to in said order,

It is hereby ordered that said order dated and filed October 16, 1912, in the proceeding entitled as above, be and the same is hereby amended so as to read as follows:

It is hereby ordered that the Railroad Commission of the State of California hereby authorizes the issue by said Pacific Electric Railway Company of $5,285,000 face value of principal of bonds of said company, maturing the first day of September, 1961, all of the outstanding bonds of any one or more series, but not a part of any series, to be redeemable at the option of the company on the first day of September, 1916, or on any semiannual interest day thereafter, and to bear interest at the rate of 5 per cent per annum, payable semiannually, under and in pursuance of the terms of trust deed or mortgage heretofore and on the first day of September, 1911, made and executed by Pacific Electric Railway Company to United States Mortgage and Trust Company, as trustee, on the following conditions and not otherwise, to wit:

1. Said bonds of Pacific Electric Railway Company, bearing numbers 23320 to 28604, inclusive, shall be exchanged by said company, bond for bond, for bonds of the following companies in amounts not to exceed the following respective amounts:

(*a*) Bonds of the face value of $2,537,000 may be exchanged for bonds of the same face value of Los Angeles Interurban Railway Company's first mortgage 5 per cent bonds, dated July 1, 1903, and issued under and secured by its mortgage and deed of trust dated July 1, 1903, to the Union Trust Company, as trustee, maturing October 1, 1943.

(*b*) Bonds of the face value of $500,000 may be exchanged for bonds of the same face value of Los Angeles and Redondo Railway Company's first mortgage 5 per cent bonds, dated January 15, 1902, and issued under and secured by its mortgage and deed of trust dated January 16, 1902, to the Union Trust Company of San Francisco, as trustee, maturing January 15, 1932.

(*c*) Bonds of the face value of $2,248,000 may be exchanged for bonds of the same face value of Los Angeles and Redondo Railway Company's first mortgage 5 per cent bonds, dated October 1, 1908, and issued under and secured by its mortgage and deed of trust, dated October 6, 1908, to the Los Angeles Trust Company as trustees, maturing October 1, 1958.

2. Pacific Electric Railway Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the

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proceeds of the sale or disposition of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale or sales or other disposition of said bonds during the previous month, the terms and conditions of sale or other disposition, the moneys realized therefrom, and the use and application of said moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the 30th day of June, 1913.

Dated at Los Angeles, California, this second day of November, 1912.

Decision No. 316. Not used.

DECISION No. 317.

E. F. JORDAN
vs.
OCEAN SHORE RAILROAD COMPANY.

Case No. 330.

Issued November 5, 1912.

REPORT OF THE COMMISSION.

ORDER SETTING HEARING.

The complaint in the above entitled proceeding having been filed with this Commission on November 4, 1912, by E. F. Jordan, one of a number of residents along the line of the defendant company from Half Moon Bay to San Francisco, who complain that after November 10, 1912, the service of the defendant company will be inadequate, in that there will be no train run by the defendant company which will arrive in San Francisco at a suitable business hour to accommodate those residents along the line of the defendant company who do business in the city and county of San Francisco; and complainant having requested that this Commission order the defendant company to establish, before November 10, 1912, a train service which will meet the needs of residents along the line of the defendant company; and this Commission being of the opinion that public necessity requires that a hearing be held in this case upon less than ten days' notice,

It is hereby ordered that the Secretary of this Commission be and he

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hereby is instructed to notify the parties to the above entitled proceeding that they may appear before this Commission on Friday, November 8, 1912, at 10 o'clock a. m., in the office of the Commission, 833 Market street, San Francisco, California, before Commissioner Loveland, at which time and place the parties to the above entitled proceeding may be heard upon the question involved in this proceeding.

And it is further ordered that the Secretary of this Commission be and he hereby is instructed to serve upon the defendant company a copy of the complaint in the above entitled proceeding, together with an order to satisfy or answer such complaint, before Friday, November 8, 1912, the date upon which the hearing is to be had in the above entitled proceeding.

Dated at San Francisco, California, this fifth day of November, 1912.

DECISION NO. 319.

IN THE MATTER OF THE APPLICATION OF WEST COAST GAS, LIGHT AND FUEL COMPANY AND HOME GAS AND ELECTRIC COMPANY OF NEWPORT BEACH FOR AN ORDER AUTHORIZING THE CONSOLIDATION OF THE TWO SAID COMPANIES AND AN ORDER AUTHORIZING THE CONSOLIDATED COMPANY TO ISSUE STOCKS AND BONDS AND FURTHER FOR A CERTIFICATE AUTHORIZING EXTENSIONS AND THE EXERCISE OF FRANCHISE RIGHTS.

Application No. 257.

Decided November 5, 1912.

Permission granted to the consolidated company, when incorporated, to issue its capital stock in amount equivalent to the par value of the present outstanding stock of the two applicant companies and in exchange therefor. Also, to issue $100,000 bonds to use the proceeds to discharge obligations and to make extensions and betterments.

Held, That the obligations which it is intended to refund were used for purposes which are properly capitalizable and that the moneys which it is intended to spend for additional property and materials are not properly chargeable to operating expenses or income.

Consideration given to whether the new corporation would be able to meet the interest obligations on the proposed bond issue in addition to paying operating expenses and other fixed charges. Based on the assumption that the proposed bond issue will complete the plants and that applicants' estimates are correct, the Commission will be reasonably safe in authorizing the proposed bond issue, particularly in view of the fact that the territory of operation is growing rapidly.

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As the gas manufacturing plant of each of applicants was constructed prior to March 23, 1912, and as the extensions which applicants desire to make will be entirely into territory which is not at present served by a utility of like character, it will not be necessary for applicants to secure approval under section 50(*a*).

Same ruling with respect to construction under a franchise granted February 20, 1912, applicants having exercised their rights and privileges thereunder prior to March 23, 1912.

With respect to a franchise effective September 16, 1912, it is necessary, under section 50(*b*), to secure from the Commission a certificate authorizing the exercise of rights and privileges thereunder.

Ordinarily, this Commission would not consider an application for the above purposes on behalf of a corporation which is not as yet in existence. In this case, however, the corporation is to be formed from the consolidation of two other corporations which are in existence and the facts were set out as fully as could have been the case if the new corporation had actually been incorporated.

William C. Crittenden, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application of West Coast Gas, Light and Fuel Company, hereinafter called the West Coast Company, and Home Gas and Electric Company of Newport Beach, hereinafter called the Home Company, for an order of this Commission authorizing the following acts:

1. The consolidation and merger of the two applicants into a new corporation to be known as the West Coast Gas Company.

2. The construction of a gas distributing system in specified towns.

3. The exercise of rights under a specified franchise.

4. The issue by the new corporation of a portion of its authorized capital stock in exchange for the outstanding capital stock of the two applicant companies.

5. The execution by the new corporation of a trust deed or mortgage to secure a proposed issue of bonds.

6. The issue by the new corporation of bonds of the face value of $100,000 for the purpose of refunding outstanding obligations of the two applicant companies and for the acquisition of property and the construction, completion, extension and improvement of facilities.

These different requests will hereinafter be considered in greater detail.

The Home Company was incorporated in September, 1908, and is now engaged in the delivery of gas to the city of Newport Beach, including the localities of West Newport, Newport, East Newport, and Balboa. It is now intended to extend this company's distributing system so as to serve Huntington Beach, an incorporated city, and Balboa Island. The Home Company's authorized capital stock consists of 50,000 shares of the par value of $1.00 each, of which shares 15,945 have been issued. The Home Company has no preferred stock, no mortgages and no bonds.

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It is joint maker with the West Coast Company of promissory notes amounting to $45,500 and owes on accounts and sundry bills an additional $7,482.49. Of the issued capital stock R. E. L. Sackett owns 15,961 shares, being all except two shares.

For the year from January 1, 1911, to December 31, 1911, the Home Company had a deficit of $797.38, and for the quarter ending March 31, 1912, there was a deficit of $217.62. Under the present management, however, which took control of the business in July of this year, the finances of the company are rapidly improving. While on June 1, 1912, the company had only 223 consumers it now has 331, with 184 additional signed up at Huntington Beach and 27 signed at Balboa Island, to both of which localities it is planned to extend the Home Company's distributing system.

The West Coast Company was incorporated on October 23, 1911, with an authorized capital stock of 7,500 shares of the par value of $10 each, making a total par value of $75,000. The entire authorized capital stock has been issued. The stock was apparently issued for very little or no consideration. With the exception of two shares it is all owned by Mr. R. E. L. Sackett. One third of the stock was transferred to Mr. Sackett by the incorporators of the company in return for real estate valued at $3,000; another third Mr. Sackett bought for $3,750; and the remaining third he secured for $4,000. The West Coast Company has constructed a plant for the manufacture of gas at Somerset and a distributing system in the towns of Clearwater, Downey, Hynes, Norwalk, Bellflower, and Artesia, which towns are located some twelve miles southeast of the city of Los Angeles. This company has already connected up two hundred subscribers and has contracts for two hundred more.

The application shows that the cost of the property of the West Coast Company on September 6, 1912, was $62,270.70 and the cost of the property of the Home Company on the same day was $38,637.95, making a total on said day of $100,908.65. The book value of the property of the West Coast Company on October 15, 1912, was $55,656.51 and of the Home Company $38,706.83, making a total of $94,363.34. Applicant's engineer testified that such extensions and additions as are still necessary to complete the contemplated plant of these two companies would cost not in excess of $10,000.00, making a total book value of $104,363.34. The testimony shows that it would cost somewhat more to reproduce these properties at the present time.

Applicants now desire to merge and consolidate their systems into a new company to be known as the West Coast Gas Company, which new company is to have an authorized capital stock of $250,000, consisting of 10,000 shares of the par value of $25 per share, of which authorized capital stock the new company is to issue an amount equivalent to the

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par value of the present outstanding stock of the two applicant companies. The new company is also to execute its trust deed or mortgage to secure a possible maximum issue of bonds of the face value of $250,000 and to issue bonds of this authorization of the face value of $100,000. The proceeds of these bonds are to be used to pay up certain outstanding obligations and to acquire additional property and to construct additional facilities as will hereinafter appear in greater detail.

In order to give further security for the contemplated bonds Mr. R. E. L. Sackett is to convey to the new corporation a ranch containing about 135 acres of an estimated present value of $700 per acre, which ranch is at present subject to a first mortgage in the sum of $20,000 held by the Security Trust and Savings Bank of Los Angeles and executed on the 21st day of March, 1912.

Applicants urge as reasons for the consolidation that without such consolidation it will be impossible to float bonds for the additions and extensions which both applicants desire to make and to pay off the outstanding obligations of each of said companies, and that there will be some saving in administrative expenditures and that it will make possible within two years the connection of the plants of the two companies by means of a high pressure main and the supply of gas thereafter from a single plant instead of from two as at present.

With these preliminary statements I shall now consider applicant's prayer in detail.

In the first place applicants ask for an order under the provisions of section 51*a* of the Public Utilities Act authorizing their merger and consolidation into the proposed new corporation, to be known as the West Coast Gas Company, and also for the transfer to such new company of the plants, franchises, and other property of applicants.

It is desired to have the new company issue to the respective owners of shares of stock in the two applicant companies its own shares of stock to the amount of the par value of the outstanding stock of the applicant companies, any difference which may result in pro-rating the number of shares, owing to the difference in the par value of the stock of the respective companies, to be paid in cash in each case by the shareholders of the two applicant companies. If each of the present shareholders of the applicant companies takes advantage of this proposition, the new company will be called upon to issue stock of the par value of $91,075 in exchange for the outstanding stock of the two applicant companies having a par value of $90,963 and the additional payment of $112 in cash. The ranch which Mr. Sackett is conveying to the new corporation will have a value of approximately $94,500, which is almost equivalent to the entire par value of the stock which it is proposed to have issued by the new company. In view of these facts I recommend that this portion of the application be granted.

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Applicant further asks under section 50*a* of the Public Utilities Act for an order certifying that public convenience and necessity require or will require the proposed construction of a gas supply and distributing system in the towns of Downey, Norwalk, Artesia, Somerset, Clearwater, and Huntington Beach. As the gas-manufacturing plant of each of applicants was constructed prior to March 23, 1912, and as the extensions which applicants desire to make will be entirely into territory which is not at present served by a utility of like character it will not be necessary for applicants to secure this Commission's order as a condition precedent to the construction of these extensions. Section 50*a* of the Public Utilities Act does not apply to a case of this kind.

Applicant further asks for a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise granted to West Coast Gas, Light and Fuel Company by Ordinance No. 291, new series, of the county of Los Angeles, permitting the construction and maintenance of a system of gas pipes under and along the public roads and highways within that portion of the county of Los Angeles which applicants, or the new corporation, desire to serve. As this franchise was granted to take effect on February 20, 1912, and as rights were exercised thereunder by applicants prior to March 23, 1912, it is not necessary to secure this Commission's consent to the exercise of rights and privileges under said franchise. It appeared, however, at the hearing that the West Coast Company has secured a franchise, effective September 16, 1912, for the delivery of gas in the city of Huntington Beach which matter was not referred to in the application. It is necessary under the provisions of section 50*b* of the Public Utilities Act to secure from this Commission a certificate authorizing the exercise of rights and privileges under said franchise and I recommend that such certificate be granted.

Applicants desire that the new corporation to be known as the West Coast Gas Company shall, after incorporation, execute its trust deed or mortgage covering all the property of the new corporation, as security for a possible maximum issue of bonds of the face value of $250,000, bearing interest at the rate of 6 per cent per annum. It is desired that the new corporation may issue under such authorization bonds of the face value of $100,000. The proceeds from these bonds are to be used as follows:

1. The proceeds from $25,000 of these bonds are to be used to refund five certain promissory notes with both applicants as makers now held by F. W. Boardman, trustee, for which notes applicants received $20,000 in cash, which money was used for the acquisition of property and the construction, completion, extension and improvement of applicant's facilities. The notes were given in the amount of $25,000 on the assump-

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tion that the bonds if issued would be sold at 80 so that the notes already take care of the bond discount.

2. The proceeds from $25,625 of said bonds are to be used to refund a promissory note in the amount of $20,500 with both applicants as makers and now held by F. W. Boardman. From this note applicants received $20,500 in cash which money was spent for purposes properly capitalizable.

3. From the proceeds of $49,375 of bonds, being the remaining bonds, it is proposed to pay obligations of the West Coast Company and also of the Home Company and to purchase additional property and materials for both companies, all as specified on pages 15, 16 and 17 of applicants' petition, the total amount of money necessary for these purposes being $39,500.

I find that the proceeds from the obligations which it is intended to refund were used for purposes which are properly capitalizable and that the moneys which it is intended to spend for additional property and materials are not properly chargeable to operating expenses or to income. If authority is secured to issue these bonds of the face value of $100,000, applicants will be able to liquidate almost all of their outstanding obligations and entirely to complete their plants according to their present plans.

The Commission devoted considerable attention at the hearing to the question of whether or not the new corporation would be able to meet the interest obligations on the proposed bond issue in addition to paying operating expenses and other fixed charges. Applicants' witnesses testified that they now had under contract some 900 services which they estimated would yield an average of $30 per year each, making a total gross revenue of $27,000 per annum. They stated also that the combined plant could be operated at an operating ratio of 60 per cent, leaving the sum of $10,800 per annum for the payment of $6,000 of interest on the bonds and for sinking fund and possible dividend on the stock. Based on the assumption that the proposed bond issue will complete the plants and that applicants' estimates are correct, the Commission will be reasonably safe in authorizing the proposed bond issue. It should be borne in mind also in this connection that the territory affected is growing rapidly and that the number of possible consumers will doubtlessly be materially augmented within the next few years.

Applicants claim that it will not be possible to sell the proposed bonds at a figure in excess of 80 cents on the dollar. They claim to have entered into an arrangement to sell the bonds for that figure. I am of the opinion that with the proper effort the bonds can be sold for more than 80 cents on the dollar. Some time will elapse before the new corporation can be incorporated and the necessary steps for the issue of the

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bonds taken. Applicants should exert themselves in the mean time to see whether they cannot secure a better price for the bonds. While this Commission's order will authorize the sale of the bonds at not less than 80 plus accrued interest this should not be taken as an indication on the part of the Commission that it place such price to be sufficient.

The West Coast Gas Company which is to issue the stock and bonds hereinafter in the order authorized, is not as yet incorporated. Ordinarily this Commission would not consider an application for such purposes on behalf of a corporation which is not as yet in existence. In this case, however, the corporation is to be formed from the consolidation of two other corporations which are in existence and the facts were set out as fully as could have been the case if the new corporation had actually been incorporated. Under these circumstances I recommend that the Commission depart from its usual course of procedure and make its order authorizing the issue of stocks and bonds by the new corporation when incorporated.

I submit herewith the following form of order:

ORDER.

West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach having filed with the Railroad Commission their application for authority to merge and consolidate, and for a certificate that public convenience and necessity require, and will require the exercise of rights and privileges under a designated franchise, and for an order authorizing the consolidated corporation, to be known as the West Coast Gas Company, to issue capital stock and execute a trust deed or mortgage upon its property, and to issue bonds as hereinafter in greater detail specified, and a public hearing having been held upon said application and it appearing to the Commission that the purposes for which the proceeds of said bonds are to be used are not properly chargeable to operating expenses or to income.

It is hereby ordered as follows:

1. West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach are hereby authorized to merge and consolidate their respective plants, systems, franchises and permits into a new corporation, to be known as the West Coast Gas Company.

2. Public convenience and necessity require the exercise by said West Coast Gas, Light and Fuel Company or by said West Coast Gas Company when incorporated, of the rights and privileges heretofore granted to said West Coast Gas, Light and Fuel Company by the city of Huntington Beach, by ordinance effective September 16, 1912.

3. West Coast Gas Company, when incorporated, is hereby authorized to issue its capital stock of the par value of $25 per share and to an amount not exceeding the total par value of $91,075, to the respective

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owners of the present outstanding shares of stock of West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach in exchange for the shares of stock respectively owned by said persons in said two companies.

4. West Coast Gas Company, when incorporated, is hereby authorized to execute and deliver its deed of trust or mortgage with possible maximum issue of bonds of the face value of $250,000 said bonds to bear interest not in excess of 6 per cent per annum, payable semiannually, after said West Coast Gas Company shall have filed with this Commission a trust deed or mortgage in form and substance satisfactory to the Commission and shall have received from the Commission a supplemental order approving said trust deed or mortgage.

5. West Coast Gas Company, when incorporated, is hereby authorized to issue its bonds of the face value of $100,000 bearing interest at the rate of 6 per cent per annum, payable semiannually under and in accordance with the terms of said trust deed or mortgage, after approval by this Commission, on the following express conditions precedent and not otherwise, to wit:

a. Said bonds shall be sold so as to net West Coast Gas Company in cash not less than 80 per cent of the face value thereof plus accrued interest.

b. The proceeds from the sale of said bonds may be used only for the acquisition of property and the construction, completion, extension, and improvement of facilities and for the discharge or lawful refunding of obligations, as follows:

1. The proceeds from the sale of bonds hereby authorized of the face value of $25,000 shall be used for the lawful refunding of 5 certain promissory notes in the amount of $5,000 each bearing interest at the rate of 6 per cent per annum payable one day after date and executed by West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach, payable to F. W. Boardman, trustee, on July 20, 1912, August 5, 1912, August 15, 1912, August 15, 1912, and August 15, 1912, respectively.

2. The proceeds from the sale of bonds hereby authorized of the face value of $25,625, shall be used for the lawful refunding of promissory note in the amount of $20,500 bearing interest at the rate of 6 per cent per annum, dated May 22, 1912, and executed by West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach payable to F. W. Boardman.

3. The proceeds of bonds hereby authorized of the face value of $49,375 shall be used for the acquisition of property and construction, completion, extension and improvement of facilities and for the discharge or lawful refunding of the obligations of West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport

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Beach in amounts not exceeding the amounts specified for these respective purposes on pages 15, 16 and 17 of the application, which pages in so far as applicable are made a portion of this order for these purposes.

4. Before the bonds hereby authorized may be issued, West Coast Gas Company shall first have filed with this Commission a certified copy of a grant, bargain and sale deed to it from R. E. L. Sackett conveying the ranch referred to in the foregoing opinion free and clear of all incumbrances except the mortgage of $20,000 to the Security Trust and Savings Bank of Los Angeles.

5. This order shall not be effective in so far as it authorizes an issue of bonds until applicant shall first have paid the fee prescribed by section 57 of the Public Utilities Act.

6. West Coast Gas Company, when incorporated, shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or other disposition of the stock and bonds hereby authorized to be issued and the disposition of each such share of stock and bonds, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission stating the sale or sales or other disposition of said stock and bonds during the previous month, the terms and conditions of sale or other disposition, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this fifth day of November, 1912.

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DECISION NO. 320.

IN THE MATTER OF THE APPLICATION OF BOARD OF TRUSTEES, CITY OF COLTON, SAN BERNARDINO COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT EIGHTH STREET AT GRADE ACROSS THE TRACKS OF SOUTHERN PACIFIC COMPANY.

Application No. 279.

Decided November 5, 1912.

REPORT OF THE COMMISSION.

Board of trustees of city of Colton, San Bernardino County, California, having on November 4th, filed with the Commission its application for permission to construct Eighth street at grade across the tracks of Southern Pacific Company in said city of Colton, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific Company has executed an easement to said city, granting the right to construct said street at grade across its tracks, and it further appearing that it is not reasonable nor practicable to avoid grade crossings of said street with said tracks, and that the application should be granted.

It is hereby ordered that permission be hereby granted to board of trustees, city of Colton, San Bernardino County, California, to extend Eighth street of said city at grade across the tracks of Southern Pacific Company between "J" street and "K" street, as shown by the map attached to the application, provided that the crossings are constructed and hereafter maintained in good and first-class condition for the safe and convenient use of the public and properly protected by crossing gates.

The Commission reserves the right to hereafter make such further orders relative to the construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this fifth day of November, 1912.

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DECISION No. 321.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE EXTENSION OF A PASSING TRACK AT GRADE ACROSS A PUBLIC HIGHWAY CALLED ELLIS LANE IN THE TOWN OF SAVANNA, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 282.

Decided November 5, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on November 5, 1912, filed with the Commission its application for permission to extend its present passing track across Ellis Lane, a public highway, in the town of Savanna, Los Angeles County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid grade crossing with said public highway, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to extend its passing track at grade across a public highway known as Ellis Lane in the town of Savanna, Los Angeles County, California, as shown by the map attached to the application, subject to the following conditions:

(1) The entire expense of constructing the crossing together with its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide at its own expense the necessary plank or guardrails for said crossing and shall ballast same, including the approaches thereto, to a depth of not less than six (6) inches with first-class gravel or stone ballast.

(3) The crossing shall be made of a width not less than eighteen (18) feet and with grades of approach not exceeding eight (8) per cent.

(4) The Commission reserves the right to hereafter make such further orders relative to the construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this fifth day of November, 1912.

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DECISION NO. 322.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES OF THE CROCKER-HUFFMAN LAND AND WATER COMPANY.

Case No. 332.

Issued November 7, 1912.

Ordering an investigation on the Commission's own motion into rates charged for water by respondent company.

REPORT OF THE COMMISSION.

The Merced Colony Improvement Club and the Merced County Water Users' Protective Association having filed with this Commission complaints assigned respectively Cases Nos. 299 and 310, which complaints draw in question the sufficiency of the service of the Crocker-Huffman Land and Water Company, and this Commission having held a hearing upon this matter on October 10, 1912, at Merced, California, which hearing has been continued to December 10, 1912, at Merced, California, and this Commission being of the opinion that a thorough investigation into the questions involved in the above mentioned cases should, in this instance, include an investigation into the rates charged by the Crocker-Huffman Land and Water Company,

It is hereby ordered that this Commission institute, on its own initiative, under the provisions of section 60 of the Public Utilities Act, an investigation into the rates charged by the Crocker-Huffman Land and Water Company, and that the Secretary of this Commission be and he hereby is instructed to notify said Crocker-Huffman Land and Water Company to appear before this Commission on Tuesday, the 10th day of December, 1912, at 10 o'clock a. m., at the courthouse, at Merced, California, before Commissioners Gordon and Edgerton, at which time and place said Crocker-Huffman Land and Water Company may appear and be heard upon the matter involved in this investigation.

And be it further ordered that if said Crocker-Huffman Land and Water Company does not appear at said time and place said company shall be guilty of contempt of this Commission and subject to the penalties prescribed by said Public Utilities Act.

Dated at San Francisco, California, this 7th day of November, 1912.

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Decision No. 323. Not used.

Decision No. 324. Not used.

DECISION No. 325.

IN THE MATTER OF THE APPLICATION OF THE SAN DIEGO, RIVERSIDE AND LOS ANGELES RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF THREE MILLION DOLLARS.

Application No. 163.

Decided November 9, 1912.

The Commission will not be disposed hereafter to view with favor the petition of an applicant to issue securities, particularly in large amounts, unless it shall appear to the Commission that the applicant has manifested good faith in its formation and in the acquisition and retention of its franchise rights. Applicants should certainly be required to clear away all clouds upon their legal existence, and to show a compliance with ordinary dictates of good faith before this Commission can well consider a request for an authorization to incur the responsibilities and obligations imposed by the issuance of stocks and bonds.

Held. **That the moneys to be derived from the sale of the bonds authorized are not reasonably chargeable to operating expenses or to income, and that such amount of bonds is reasonably necessary to carry out applicant's purposes subject to the express conditions precedent in the order specified.**

Leroy A. Wright, for applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application by San Diego, Riverside and Los Angeles Railway Company for an order authorizing the issue of its bonds of the face value of three million dollars for the purpose of constructing a line of railway between San Diego and Escondido, in San Diego County, California.

Applicant filed its articles of incorporation in the office of the county clerk of San Diego County on March 7, 1912, and a certified copy thereof in the office of the Secretary of State on March 12, 1912. Applicant's route, as described in its articles of incorporation, runs from the city of San Diego to the city of Escondido, thence to the city of Riverside and thence to the city of Los Angeles, with branch lines from La Mesa Springs easterly one mile, from the west line of El Cajon Valley to Lakeside, from Poway Valley to Ramona, from the crossing of the San Pasqual River easterly seven and one half miles, and from Chollas Valley to Lemon Grove, all of said branch lines being in San Diego County. The estimated length of the main line of applicant's railroad

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is one hundred and eighty (180) miles, and of the branch lines thirty-five (35) miles, making a total estimated mileage of two hundred and fifteen (215) miles.

The hearing on this application was held in the city of San Diego on August 31, 1912. At that time applicant announced that Oscar Lawlor and James E. Degnan of Los Angeles, who had theretofore performed all of applicant's legal work, had withdrawn and Leroy A. Wright for the first time appeared for applicant. The applicant was informed at the hearing that certain documentary information would have to be supplied before the Commission could render its decision on the application. Although the Commission has written numerous letters and has personally urged Mr. Franklin Helm, the promoter of the enterprise, to furnish this alleged information, the Commission has been unable to secure the most important of the information so required, including particularly the alleged contract between applicant and the Universal Construction and Investment Company, hereinafter at times referred to as the Construction Company, and the letters, cablegrams or other documentary evidence showing the terms of the alleged contract for the sale of its bonds, which applicant's witnesses testified had been entered into with certain London bankers. The Commission is forced to the conclusion that this information does not exist and will proceed on that assumption to the decision on this application.

The project of constructing a railroad between San Diego and Escondido via El Cajon has been under consideration since about September, 1909, during which month the San Diego, El Cajon and Escondido Railway Company was incorporated under the laws of this state by citizens of San Diego, El Cajon and Escondido. The organizer of this corporation was Mr. G. W. Pursell. Pursell later secured certain franchises and rights of way, to which reference will hereafter be made, and thereafter conveyed them by deed dated April 23, 1910, to Interurban Investment Company, which corporation in turn conveyed the same property to San Diego, El Cajon and Escondido Railway Company by deed dated June 15, 1911. The San Diego, El Cajon and Escondido Railway Company thereafter, by deed dated February 23, 1912, conveyed the same property to Marion P. Waite, one of the directors of the Universal Construction and Investment Company. Thereafter, Mr. Waite conveyed the same property to the Universal Construction and Investment Company, which company, by deed dated March 15, 1912, and apparently acknowledged on April 5, 1912, conveyed the property to the present applicant, the San Diego, Riverside and Los Angeles Railway Company.

At this point I desire to refer to agreement dated March 15, 1912, between San Diego, Riverside and Los Angeles Railway Company and San Diego, El Cajon and Escondido Railway Company. This agree-

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ment recites most of the transfers hereinbefore specified and then contains the following provisions:

1. "The Railway Company covenants that it has entered into a valid contract for the construction of its line from San Diego to Los Angeles with the Universal Construction and Investment Company."

2. "It hereby assumes all the obligations of said San Diego, El Cajon and Escondido Railway Company with respect to the conditions in its franchises so conveyed and particularly its obligations upon the $15,000 bond now held by the city of San Diego, heretofore executed and filed by said company as required by the terms of the Company's franchise within said city."

"The San Diego, El Cajon and Escondido Railway Company acknowledges that it has received a certificate for 1,000 shares of capital stock of the railway company and joins in this agreement for the purpose of evidencing that the agreement heretofore entered into by and with said M. P. Waite has in all respects been complied with."

The copy of this agreement which has been filed with the Commission was executed by the San Diego, Riverside and Los Angeles Railway Company but not by the San Diego, El Cajon and Escondido Railway Company. There is on file with the Commission a similar agreement between the Universal Construction and Investment Company and G. W. Pursell, dated April 5, 1912, reciting that Pursell is the holder of all the outstanding shares of the capital stock of San Diego, El Cajon and Escondido Railway Company and of the Interurban Investment Company, that Pursell is authorized and empowered to deliver all of said shares to M. P. Waite and that Waite has assigned his interest therein to the Universal Construction and Investment Company. The agreement then contains the following provisions:

1. "The company covenants that it has entered into a contract with the San Diego, Riverside and Los Angeles Railway Company for the construction of the line of railway of said company from San Diego to Los Angeles and that it is to receive for that part of said line from San Diego to Escondido three million dollars in the first mortgage 5 per cent sinking fund gold bonds of said company."

2. "The company covenants to pay to said G. W. Pursell for the benefit of the owners of said stock from the proceeds of the bonds which it is to receive for the construction of said line and which are not needed for that purpose, the sum of $45,000 in cash, such payment to be made in any event on or before six months from the date hereof."

3. "It further covenants at the time of said payment of $45,000, as aforesaid, to deliver to said G. W. Pursell 900 shares of the capital stock of said San Diego, Riverside and Los Angeles Railway

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Company, which stock shall be full paid, half common and half preferred."

4. "Said G. W. Pursell joins in this contract for the purpose of acknowledging that the same is in all respects in conformity with the agreement of the parties interested therein and heretofore made on the 8th day of February, 1912."

The copy filed with the Commission has been executed by the Universal Construction and Investment Company but not by Pursell. These two agreements seem to express the understanding of the parties at the time the San Diego, El Cajon and Escondido Railway Company conveyed to Waite the franchises and other property which had been acquired by Pursell. In each case there is a covenant to the effect that a contract has been entered into between San Diego, Riverside and Los Angeles Railway Company and the Universal Construction and Investment Company for the construction of the railway. No such contract, apparently, was ever entered into. Furthermore, payment has not been made to Pursell, as provided in contract dated April 5, 1912. I am of the opinion that San Diego, El Cajon and Escondido Railway Company may have a valid cause of action to have its conveyance of the property now claimed by applicant set aside for failure of consideration, and recommend that this possible defect in the title to all of the railway company's property be removed before the railway company be permitted to issue any bonds.

The property now claimed by applicant consists of three franchises, certain rights of way, and certain grading and track. I shall consider separately the present status of each of these items.

The franchises claimed by applicant are franchises or permits heretofore granted to G. W. Pursell by the city of San Diego, the Park Commissioners of the city of San Diego and the city of Escondido. The franchise from the city of San Diego was secured by Ordinance No. 3908, which was adopted by the common council on November 8, 1909, approved by the mayor on November 16, 1909, and effective on December 17, 1909. The franchise is for 25 years, for a street railway to be operated by electricity, and provides that the construction of the railway must commence within six months and that it shall be completed, within one year from the commencement of construction, to El Cajon, and by June 1, 1911, to Escondido. The provisions of the ordinance with reference to time of construction not having been complied with, the city council of San Diego on May 17, 1911, adopted Ordinance No. 4437, extending the time for the completion of the railway to El Cajon to June 1, 1912, and the time for the completion to Escondido to June 1, 1913. Again the applicant failed to comply with the conditions. The city council thereupon on June 1, 1912, adopted Ordinance No. 4748, reciting that the road had not been completed in accordance with the provisions of Ordinance No. 4437, and providing that the filing

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with the city clerk of a good and sufficient bond, with sureties satisfactory to the city council, in the penal sum of $15,000, conditioned that the road should be completed to La Mesa on or before November 1, 1912, and to Escondido on or before June 1, 1913, the time within which the road should be completed to La Mesa should be extended to November 1, 1912, "but otherwise there shall be no extension of time for the purpose of complying with the conditions of said franchise and this ordinance shall have no effect whatever." Applicant thereafter filed with the city council a bond in the sum of $15,000, with San Diego, Riverside and Los Angeles Railway Company as principal and the Universal Construction and Investment Company as surety. The city council thereafter found that the surety was not satisfactory and was not adequate security or security at all for the faithful performance of the conditions required by Ordinance No. 4748. The council thereupon, by Resolution No. 11307, directed that the bond be returned to the principal, which was done. The present status of this franchise is accordingly that the applicant has not complied with its conditions and that it is subject to forfeiture by the city of San Diego. It should be noted also, that the franchise is for a street railway only. As applicant expects to derive the major portion of its revenue from freight traffic, it is evident that a street railway franchise alone will not answer its purpose and that a franchise permitting the transportation of freight through the streets of San Diego must be secured before applicant can have a reasonable prospect for success and before there will be reasonable security for the bonds.

The permit from the Board of Park Commissioners of the city of San Diego was secured by G. W. Pursell on August 24, 1909. A former permit had lapsed and this is the second permit. One of the conditions of the permit was that the railway should be completed and in operation over its entire route from San Diego to Escondido by June 1, 1911, and the permit provided that unless this was done, the permission and authority thereby given should be considered revoked. The permit provided that a written notice from the Board of Park Commissioners of failure to carry out the conditions of the permit should be considered a sufficient revocation. Thereafter the time for the completion of the railroad was extended from June 1, 1911, to June 1, 1912. On June 1, 1912, a letter signed "Board of Park Commissioners, by Julius Wangenheim, President," was sent to Mr. Pursell. This letter reads as follows:

> "Kindly note that by the terms of your application and the extension granted by the park board for the 'Pursell Railroad' the franchise is revoked and annulled by limitation on June 1, 1912, of which kindly take notice."

Applicant claims that this notification was not concurred in by the other members of the board. Be that as it may, there is no doubt that on the facts, the Park Commissioners have the right to revoke the permit.

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On September 21, 1909, the city of Escondido granted to G. W. Pursell by Ordinance No. 135, a franchise for fifty years for the construction and operation of a railway in the city of Escondido, to be operated by electricity or other motive power. This ordinance provided, among other things, that it was granted on the express condition that the work of constructing the railway should be commenced within four months and should be completed within three years after September 21, 1909. As this condition has not been complied with, the board of trustees of Escondido have the right to forfeit the franchise.

Before applicant issues any of the bonds hereby authorized it should be compelled to remove the possibilities of forfeiture of these three franchises and to secure from the city of San Diego and from the Park Commissioners, if necessary, a franchise which will permit it to haul freight through the city.

Applicant's right of way between the city limits of San Diego and Escondido is nearly all covered by contracts. In no case has a deed to the property been secured. While some of these contracts apparently do not have any time limit, quite a number of them do have such a limit, which in many cases has expired. The entire amount of money paid on these contracts is $2,100.00. For rights of way within the city of San Diego applicant's predecessors paid $1,062.60. Some additional property will have to be purchased within the city limits. Before the bonds are issued, applicant should satisfy the Commission as to its ability to clear the title to its rights of way.

Applicant has graded its right of way in the city park in San Diego and partially for some seven miles from the city limits of San Diego to La Mesa. Applicant has laid about 300 feet of track at the foot of E street in San Diego on such portions of the streets as are not macadamized, and about 4,100 feet of track in the city park, with several breaks where bridges are to be constructed.

The entire amount of money hitherto spent on the enterprise by Mr. Pursell, and his associates, and later by the present applicant, including the sum of $21,500 which it was necessary to pay into the treasury before the articles of incorporation could issue, and including also bills payable in the amount of $7,500, consists of $106,297.51. Of this amount, $41,065.25 was spent by Mr. Pursell and his associates and the remaining amount by Mr. Helm and his associates in the present company. The amount claimed to have been spent by Mr. Helm and his associates includes $5,000 for attorney's fees, $8,300 for foreign engineers, $2,800 for cablegrams and $7,500 for traveling expenses and hotel bills. The amount of money spent by Mr. Helm and his associates which actually went into construction of the road, including engineering, amounts to $11,132.26. The item of $21,500 is recited in the minutes

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of the applicant as having been paid to M. P. Waite "for services in connection with the extension of the franchise of the company in the city of San Diego, and for all services to date, except for construction charges." Mr. Waite performed no services in connection with the extension of applicant's franchises in San Diego. If this check represents the money which was paid into the hands of applicant's treasurer prior to incorporation and if the money, after having served its purpose, was turned back to or for the man who originally supplied the funds, there is serious doubt as to whether the incorporation is valid. It certainly should not be possible to deposit with a proposed railway company a check so as to comply literally with the provisions of the law demanding that a hundred dollars per mile should be paid into the treasury before incorporation, and then after incorporation, to draw the money out again. This transaction should be explained to the Commission's satisfaction before the bonds can be issued.

Applicant's total authorized capital stock consists of eight million dollars, divided into 80,000 shares of the par value of $100 each. Of this amount, $6,500,000, consisting of 65,000 shares, is common and $1,500,000, consisting of 15,000 shares, is preferred. The holders of the preferred stock are entitled to receive, when and as declared by the board of directors, out of the surplus or net profits, but only out of cumulated profits and not out of the profits of any subsequent year or years, non-cumulative dividends at a rate not to exceed 6 per cent per annum. The preferred stock also has preference in the liquidation or dissolution of the corporation. Of the amount of capital stock so authorized, five shares have been issued to the directors of the corporation and the remaining shares, amounting to $7,999,500, have been issued to and are now held by Universal Construction and Investment Company. Of the stock so issued, Certificate No. 13 for 1,000 shares and Certificate No. 14 for 1,145 shares, were issued to Universal Construction and Investment Company on April 5, 1912, without the prior consent of this Commission. These certificates are void because they were issued subsequent to the effective date of the Public Utilities Act—March 23, 1912—without the prior authorization of this Commission. All of the remaining stock was issued between March 12, 1912, and March 23, 1912, when the Public Utilities Act became effective. Applicant's attorneys should have known that the policy of the State as expressed by the Public Utilities Act, was against such procedure and that this act would become effective within less than twelve days after the first of the stock was issued.

The resolution of applicant's board of directors authorizing the issue of this stock to the construction company was adopted at a meeting of the board of directors held in the city of San Diego on March 15, 1912. At that time the construction company presented a letter offering to

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float three million dollars of applicant's bonds and to assign to applicant the rights, franchises and property theretofore owned by the San Diego, El Cajon and Escondido Railway Company, on condition that applicant would issue to it its shares of stock as hereinafter indicated and also to execute an agreement wherein applicant should assume the obligations of the San Diego, El Cajon and Escondido Railway Company, including the obligations on the $15,000 bond held by the city of San Diego. The letter specifically provided that "in the event that the undersigned shall receive for said bonds a greater sum than seventy-five per cent of the face amount thereof, as heretofore set forth, *such sum, if any, shall be and become the property of the undersigned, and it shall not be required to account therefor to you.*" This last provision is apparently contrary to Mr. Helm's testimony (see page 143 of the transcript) which was as follows:

> "I have stated and want to go on record again as stating that the Universal Construction and Investment Company don't receive one cent of cash over and above the 75 cents that they receive for these bonds."

The board of directors thereupon adopted a resolution reciting that it was advisable to accept the offer of the construction company, calling upon the construction company to proceed with its arrangements for the placing and disposition of the bonds, "and that to aid it in so doing and to compensate it for its services as in said proposition provided and in payment for the property so to be transferred to this company, there be forthwith issued to said Universal Construction and Investment Company, or to its nominee, 79,995 shares of the capital stock of this company, 69,995 shares thereof *for services* and 10,000 shares for property purchased, *which stock when issued shall be regarded as being issued for services rendered and property purchased,* and shall be stamped full paid and non-assessable." The resolution then proceeded to authorize the president and secretary to execute the agreement with respect to the assumption of the obligations of the San Diego, El Cajon and Escondido Railway Company, which agreement apparently never has been executed.

Referring now to the "services rendered" by the Construction Company in return for the 69,995 shares of applicant's capital stock, including 5,000 shares of preferred stock, I find that the construction company's articles of incorporation were filed in the office of the Secretary of State of California on March 12, 1912. What services that company performed between March 12, 1912 and March 15, 1912, the day on which applicant's capital stock was issued to it, to entitle the construction company to capital stock of the value of $6,999,500 does not appear. In my opinion, this stock was issued contrary to the provisions of the Constitution of this State and is entirely void. The remaining one

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million dollars in preferred stock was issued to the construction company in return for the property which had theretofore been conveyed by San Diego, El Cajon and Escondido Railway Company and for which property Mr. Pursell, and his associates, had spent $41,065.25. The sale of preferred stock is the device frequently adopted by a utility to secure the moneys which it cannot derive from the sale of its bonds. A transaction by which a utility divests itself of one million dollars of preferred stock in return for property which cost less than five per cent of that amount speaks for itself and needs no further comment. I recommend that a proper adjustment of applicant's stock transactions be made a condition precedent to the issue of the bonds hereby authorized.

This same construction company on March 12, 1912, presented to applicant's board of directors a letter offering to build, equip and complete applicant's proposed line of railway from San Diego to Los Angeles for six million dollars, payment to be made for cost and ten per cent, the line between San Diego and Escondido to be completed by December 1, 1912. The board of directors of applicant thereupon adopted a resolution accepting the offer of the construction company and directing applicant's engineer to prepare specifications for the construction of the line of railway and to deliver the same to the president, whereupon the president and secretary were to be authorized to enter into a contract with the construction company for the construction and completion of the line of railway, according to the terms, conditions and intent of the offer. If it was intended to tie up the railway company in this way before the effective date of the Public Utilities Act, that intent was not carried out for the reason that the proposed contract was never entered into. No provision was made for the filing of a bond by the construction company to protect the railway company, nor was any guarantee given for the performance by the construction company of the contract into which it was to enter. The construction company was incorporated on the very day of the offer and there was nothing to show that it was competent or able to construct applicant's line of railway. At the same meeting the construction company presented a letter dated March 12, 1912, offering to float for applicant a bond issue of eight million dollars, whereupon the applicant's directors adopted a resolution by which the construction company was retained and employed to assist in floating the securities of this company "to be hereafter authorized."

Applicant desires now to issue three million dollars of its bonds and to deliver them to the construction company under the alleged contract with that company, the construction company to sell the bonds and to apply 75 cents on each dollar of bonds to the purposes of the construction. As has heretofore appeared, the construction company is to keep

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for itself all moneys derived from the sale of these bonds in excess of 75 per cent of the face amount thereof.

No valid contracts have been executed between the railway company and the construction company. I recommend that this Commission refuse to recognize any transactions hitherto made between these two companies and that such bonds as may be issued by applicant be issued and sold by it directly and the proceeds thereof deposited in applicant's treasury, to be expended under the directions of this Commission.

Applicant asks for authority to issue bonds of the face value of three million dollars and submits the following estimates of moneys necessary to build its line of railway from San Diego to Escondido:

Cost lines to Escondido	$1,475,304 00
Cost Ramona extension	464,696 00
Terminal properties in San Diego	245,000 00
Additional rights of way outside of San Diego	25,000 00
New route within San Diego	100,000 00
Three franchises	10,200 00
Rolling stock	158,800 00
Buildings	67,500 00
Shop and shop equipment	45,000 00
Pier and wharves	114,500 00
Overhead electric construction	375,000 00
Interest on $3,000,000 at 5 per cent	225,000 00
Total	$3,306,000 00

Certain of the above items are obviously too high. Interest during construction should be for one year only at 6 per cent per annum. The item for overhead electric construction is probably about 30 per cent too high. On the other hand, certain of the items, such as the cost of the line to Escondido and the cost of the Ramona extension, seem to be reasonable. Certain other items may be dispensed with, at least for the present. It is a settled policy of this Commission in case of a new enterprise not to permit the issue of bonds of a face value up to the entire value of the property. Bearing in mind this policy and the fact that applicant has at present certain property consisting partly of contracts for right of way and of the franchise hereinbefore referred to, and bearing in mind also what has hereinbefore been said as to certain items in applicant's list which are too high and others which may be unnecessary for the present, I am of the opinion that the Commission may safely authorize an issue of bonds of the face value of $2,500,000, on the terms hereinafter specified, provided that applicant shall first have presented to the Commission a feasible plan for raising the money which will be necessary for the enterprise in excess of that which will be derived from the sale of the bonds.

Applicant asks authority to permit the construction company to sell its bonds at 75. In its petition, applicant alleges that "in pursuance

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of an agreement heretofore, and on the 15th day of March, 1912, entered into by and between your petitioner and the Universal Construction and Investment Company, a corporation of this State, said Universal Construction and Investment Company, for the consideration in said agreement mentioned, did, through its agents in the city of London, England, and in other foreign cities, arrange for the purchase of three million dollars in face value of said bonds of your petitioner, to be issued as aforesaid, at the price or sum of 75 per cent of such face value." At the hearing, Mr. Franklin Helm testified that the bonds were already underwritten and that the contract for their sale was signed some time in May or June of this year. In spite of the most insistent efforts of this Commission, we have been unable to secure the contracts and other documentary evidence in substantiation of this statement, although repeated efforts have been made to secure the same from Mr. Helm. The Commission will accordingly have to disregard any such purported arrangements with the London bankers in the same way in which it must disregard arrangements made by applicant with the construction company. Mr. Helm also testified that the rate of interest on these bonds was to be 6 per cent, while the petition in this case, which was filed on July 26, 1912, at a date subsequent to that on which Mr. Helm stated that the contracts had been signed, alleged that the interest was to be 5 per cent. Attached to the petition was a form of trust deed which specified that the interest was to be 5 per cent. The resolution of applicant's board of directors, adopted at an adjourned meeting held March 15, 1912, at 5 o'clock p. m., in the city of San Diego, specified that the rate of interest was to be 5 per cent per annum. I am referring to this matter now not on the question as to what the rate of interest should be, but on the question of whether or not a contract actually was signed up with people in London or elsewhere. I am convinced that it will be necessary, under the circumstances of this case, to have the bonds bear interest at the rate of 6 per cent.

This Commission has not heretofore authorized the sale of any public utility bonds at less than 80, and I see no reason for departing from that policy in this case. If the bonds hereby authorized are sold at 80, applicant will net therefrom two million dollars. The additional amount necessary to build its railroad will have to be raised in some other manner, as hereinbefore indicated.

Attached to the application is a printed draft of a trust deed or mortgage, dated June 1, 1912, between the San Diego, Riverside and Los Angeles Railway Company and Citizens' Trust and Savings Bank, to secure the proposed bond issue. This indenture contains many mistakes. It will be necessary that a form of trust deed satisfactory to this Commission be prepared before the bonds herein authorized may issue

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and that the necessary changes be made in the resolution of the board of directors heretofore adopted authorizing the trust deed.

At the hearing, the Commission examined carefully the prospects of success attendant upon a line of railway between San Diego and Escondido. The Commission investigated the possibilities of the country and the kind and amount of traffic which such a railroad could reasonably be expected to transport, with a view to ascertaining whether or not there is a reasonable prospect that such railroad could pay interest on its outstanding obligations and lay aside moneys for a sinking fund, in addition to paying operating expenses. The proposed line of railway will pass through sections of country which are very fertile and which present good opportunities for development. San Diego and vicinity are experiencing a marked and substantial growth, which growth will probably be materially accentuated upon the completion of the Panama Canal. I am of the opinion that if such a railroad were honestly and economically constructed and operated, it would have a reasonable prospect of being able to pay interest on its obligations, in addition to operating expenses and sinking fund. Such a railroad would be a great blessing to the communities affected, and this Commission will certainly do all in its power to aid an enterprise which honestly and legitimately tries to fulfill this public need. I find that the moneys to be derived from the sale of the bonds authorized in this proceeding are not reasonably chargeable to operating expenses or to income and that such amount of bonds is reasonably necessary to carry out applicant's purposes, subject to the express conditions precedent hereinafter in the order specified.

> The Commission will not be disposed hereafter to view with favor the petition of an applicant to issue securities, particularly in large amounts, unless it shall appear to the Commission that the applicant has manifested good faith in its formation and in the acquisition and retention of its franchise rights. Applicants should certainly be required to clear away all clouds upon their legal existence and to show a compliance with ordinary dictates of good faith before this Commission can well consider a request for an authorization to incur the responsibilities and obligations imposed by the issuance of stocks and bonds.

I submit herewith the following form of order:

ORDER.

San Diego, Riverside and Los Angeles Railway Company having filed with this Commission its application for an order of this Commission authorizing the issuance by said company of bonds to the amount of three million dollars, face value, said bonds to be payable on the first day of June, 1952, and to bear interest at the rate of 5 per cent per annum, which interest was changed at the hearing to 6 per cent, payable

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semiannually and secured by a trust deed or mortgage upon all the property of the company, and a public hearing having been duly held upon said application, and the Commission finding that the money to be procured by the issue of the bonds hereby authorized, on the terms and conditions hereinafter specified, is reasonably required by said company for the acquisition of property and the construction, completion, extension and improvement of facilities, as hereinafter more particularly specified, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that the Railroad Commission of the State of California hereby authorizes the issue by San Diego, Riverside and Los Angeles Railway Company of $2,500,000, face value, of principal of bonds of said company to bear interest at 6 per cent per annum, payable semiannually, under and in pursuance of the terms of trust deed or mortgage hereafter to be approved by this Commission, subject to the following conditions precedent and not otherwise, to wit:

1. San Diego, Riverside and Los Angeles Railway Company shall sell the said bonds hereby authorized so as to net the said company not less than 80 per cent in cash of the par value of the principal thereof, besides interest accrued thereon.

2. The proceeds from the sale of said bonds shall be applied only to the construction and equipment of applicant's line of railway between San Diego and Escondido, the different general items and amount of proceeds to be spent therefor to be set forth in supplemental order hereafter to be issued, after the conditions precedent hereinafter specified have been complied with.

3. San Diego, Riverside and Los Angeles Railway Company shall keep true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable, is made a part of this order.

4. Before applicant may issue any of said bonds it shall first have complied to the Commission's satisfaction with the following conditions precedent:

(*a*) Applicant shall have filed with this Commission evidence satisfactory to the Commission that San Diego, El Cajon and Escondido Railway Company and G. W. Pursell will not proceed against applicant for breach, if any, of applicant's covenants in connection with the transfer of the property of San Diego, El Cajon and Escondido Railway Company to applicant.

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(*b*) Applicant shall first have filed with this Commission evidence satisfactory to the Commission that the city of San Diego, the board of Park Commissioners of San Diego and the city of Escondido will not insist on the causes of forfeiture of the franchises or permits heretofore secured by G. W. Pursell and that applicant has from said cities and said board valid franchises or permits under which it can proceed to the completion of its line of railway.

(*c*) Applicant shall first have filed with this Commission a certified copy of a franchise from the city of San Diego, and from the Board of Park Commissioners, if necessary, permitting applicant to transport freight over a feasible and reasonable route over the streets of said city to deep water in San Diego Bay.

(*d*) Applicant shall first have filed with this Commission evidence satisfactory to the Commission either that it has or can secure satisfactory title to its right of way.

(*e*) Applicant shall first have made adjustments satisfactory to the Commission with reference to the issue of its capital stock.

(*f*) Applicant shall first have filed with this Commission evidence satisfactory to the Commission with reference to securing the funds in addition to those to be derived from the sale of said bonds, necessary for the construction of its line of railway.

(*g*) Applicant shall first have filed with this Commission a certified copy of a trust deed or mortgage, in form and substance satisfactory to the Commission.

(*h*) Applicant shall first have secured from this Commission a supplemental order stating that each of the conditions precedent hereinbefore specified has been complied with in a manner satisfactory to the Commission, and prescribing in further detail the purpose for which the proceeds of said bonds are to be spent and the amount of said proceeds which is to be spent for said respective purposes.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of November, 1912.

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DECISION NO. 326.

IN THE MATTER OF THE APPLICATION OF SAN JOSE TERMINAL RAILWAY COMPANY FOR AUTHORITY TO ISSUE BONDS.

Application No. 57.

Decided November 9, 1912.

In a supplemental petition, applicant substantially reduces its original cost estimates for equipping a proposed railroad, confining said estimates to equipment necessary to passenger business only and eliminating the purchasing of freight equipment.

Held, That the capital desired to be secured is not sufficient for applicant's purposes, even though applicant's business be at first limited primarily to the passenger business. Provision is, accordingly, made in the order for raising additional money which is to be kept in applicant's treasury and to be expended later for the purposes properly capitalizable, after an order has been secured from this Commission specifying the purposes and amounts.

Held, That before applicant issues any bonds it should have in its treasury from the sale of preferred stock the sum of twenty-five thousand dollars in cash.

Ralph Hathorn for applicant.

SUPPLEMENTAL OPINION.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

Applicant heretofore, on August 7, 1912, filed with this Commission its application for authority to issue bonds of the face value of $650,000, for the purpose of constructing its proposed line of railway between San Jose and Alviso, near the southern end of San Francisco Bay, and of purchasing equipment for the operation of the railway for the purpose of passenger and freight traffic, and also to enable applicant to secure water connection between Alviso and San Francisco, over San Francisco Bay. The Commission, on October 9, 1912, made its order on said application, granting authority to issue bonds of the face value of $400,000 on the conditions therein specified. Reference is hereby made to the Commission's opinion and order on said application. Applicant thereafter, on November 1, 1912, filed its amended and supplementary application and petition, asking authority to issue bonds of the face value of $200,000, and also to sell a portion of its preferred stock, for the purposes specified in the amended and supplementary application. The matter came on for hearing on November 8, 1912, and is now ready for decision.

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In the amended and supplementary application applicant states that it desires to raise $155,259.66, for the following purposes:

1. For the purpose of purchasing real property in San Jose and Alviso, dredging Alviso Slough, wharves and steamer landing, and shop tools	$19,100 00
2. For the purpose of constructing applicant's line of railway between San Jose and Alviso	130,159 66
3. For the purpose of purchasing equipment	6,000 00

The very substantial reductions in applicant's original estimates result from the fact that applicant does not now ask authority to issue bonds for the purpose of purchasing freight equipment. Applicant's present application is confined primarily to passenger business. The sum to be spent on equipment is for four secondhand motor cars to be used primarily in the passenger business between San Jose and Alviso. Applicant intends to enter into a contract with the proprietor of a vessel fit for passenger transportation, and to make connection with its line of railway at Alviso. It is expected to make two round trips a day, and applicant expects to carry an average of 200 passengers per day, each way, between San Jose and San Francisco, at a fare of $1.50 or $1.25 per round trip. One of applicant's witnesses, a man who has had many years of experience in navigation on San Francisco Bay, testified that in his opinion the number of passengers per day would soon materially exceed 200.

While applicant desires at present to raise only $155,259.66, it is evident to the Commission that this amount will not be sufficient for applicant's purposes, even though applicant's business be at first limited primarily to the passenger business. Provision is accordingly made in the order in this case for raising some additional money, which is to be kept in applicant's treasury and to be expended later, for purposes properly capitalizable, after an order has been secured from this Commission specifying the purposes and amounts.

Applicant's present property consists of the right of way between San Jose and Alviso, with franchises from the city of San Jose and the city of Alviso, and the county of Santa Clara. The right of way has been graded throughout almost its entire extent. Testimony was introduced at the hearing concerning the value of applicant's property. The testimony concerning applicant's franchises is not relevant in this connection, for the reason that under the provisions of section 52 of the Public Utilities Act this Commission has not power to authorize the capitalization of any franchise or permit in excess of the amount actually paid to the State or a political subdivision thereof, as the consideration for the grant of such franchise or permit. Applicant's witnesses testified that its right of way could not be repurchased for less than $100,000. This right of way consists of some 7 miles of land of an average width of 30 feet, being a total of about 28 acres. I am of

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the opinion that the value placed upon this property by applicant's witnesses is considerably in excess of its real value. Applicant's witnesses also testified that $30,000 in cash had been expended by applicant for rights of way, rent, salaries, office furniture, supplies and stationery, advertising matter, real estate in San Jose, engineering, and other purposes. Of this amount some $8,000 represents moneys paid for rights of way. Mr. J. A. Mehling and Mr. M. J. Gardner have spent some time and money in connection with the enterprise, and have received in return therefor practically all of applicant's common capital stock. While the evidence does not show the exact value of applicant's present property, I am of the opinion that this property, together with the sum hereinafter specified as necessary to be raised as a condition precedent to the issue of the bonds, will provide a reasonable margin for the bonds.

I am of the opinion that an issue of bonds of the face value of $200,000, to be sold so as to net applicant not less than par plus accrued interest, is reasonably necessary for the purposes specified in the amended and supplementary application, on the conditions in the order specified, and I find that the purposes for which the proceeds of said bonds are to be spent are not in whole or in part reasonably chargeable to operating expenses or to income.

I find that before applicant issues any bonds it should have in its treasury, from the sale of preferred stock, the sum of $25,000 in cash. Applicant's preferred stock is 7 per cent non-cumulative stock, and should be sold so as to net applicant not less than par.

I submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

San Jose Terminal Railway Company having applied to the Railroad Commission for authority to issue bonds to the amount of $200,000, face value, said bonds to be payable on the 16th day of March, 1932, unless sooner redeemed, and to bear interest at the rate of 5 per cent per annum, payable semiannually, on the 16th day of March and the 16th day of August of each year, and secured by a trust deed or mortgage upon all the property of the company, and also for authority to issue its preferred capital stock in such amount as may be necessary to raise the additional amounts of money necessary for the purpose of constructing its line of railway, and not secured from the sale of applicant's bonds, and a public hearing having been duly held and it appearing to the Commission that the issue of said bonds and preferred stock is reasonably required by said company for the acquisition of property and the construction, completion, extension, and improvement of applicant's facilities and for the discharge of its obligations, all as hereinafter specified, and that the same are not reasonably chargeable to operating expenses or to income,

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It is hereby ordered that the Railroad Commission of the State of California hereby authorizes the issue by San Jose Terminal Railway Company of two hundred thousand dollars ($200,000), face value, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of bonds of said company, maturing on the 16th day of March, 1932, unless sooner redeemed, to bear interest at 5 per cent per annum, payable semiannually, under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the 16th day of March, 1912, made and executed by said San Jose Terminal Railway Company to Garden City Bank and Trust Company, as trustee, and also the issue by said company of $25,000 face value of its 7 per cent non-cumulative preferred stock, upon the conditions following and not otherwise, to wit:

1. San Jose Terminal Railway Company shall sell said bonds hereby authorized so as to net said company not less than 80 per cent of the par value of the principal thereof besides interest accrued thereon, and the preferred stock so as to net said company not less than par.

2. The proceeds from the sale of said bonds shall be applied to the following purposes only, that is to say:

(*a*) For the discharge of applicant's obligations to Mahoney Brothers for grading, $10,204.39.

(*b*) For the acquisition of property and the construction, completion, extension, and improvement of facilities, for the items specified in "Exhibit X" attached to applicant's amended supplementary petition, to which exhibit reference is hereby made for particulars, amounts not to exceed in the aggregate the following amounts for the following purposes, respctively:

(1) For the purchase of real property	$19,100 00
(2) For the construction of applicant's line of railway	119,955 27
(3) For the purchase of motor cars	6,000 00

3. Before San Jose Terminal Railway Company may issue any of said bonds it shall first have filed with this Commission, under oath, a statement showing that it has received in its treasury from the sale of said preferred stock the sum of $25,000 in cash and shall have received a letter from this Commission stating that applicant may proceed with the issue of its bonds.

4. The moneys derived by applicant from the sale of its bonds and preferred stock, as herein authorized, in excess of the amounts necessary for the purposes and in the amounts specified in applicant's said Exhibit X, shall be kept by applicant in its treasury and shall not be expended unless applicant shall first have secured from this Commission an order authorizing the expenditure and specifying the purposes and amounts thereof.

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5. San Jose Terminal Railway Company shall keep true and accurate accounts showing the receipt and application in detail of the sale of the bonds and preferred stock hereby authorized to be issued, and on or before the twenty-fifth day of every month the company shall make a verified report to the Commission stating the sale of such bonds and preferred stock during the preceding month, the terms and conditions of such sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

6. The authority hereby given to issue bonds and preferred stock shall apply only to bonds issued by applicant on or before the 31st day of October, 1913.

7. The effectiveness of this order is conditioned upon the prior payment to this Commission of the fee specified in section 57 of the Public Utilities Act.

8. This order shall supersede and take the place of the order heretofore made on October 9, 1912, in the proceeding entitled as above.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of November, 1912.

DECISION NO. 327.

CITY OF BERKELEY
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 282.

Decided November 9, 1912.

Modifying decision previously entered with respect to stoppage of passenger trains.

REPORT OF THE COMMISSION.

SUPPLEMENTAL OPINION.

The defendant in the proceeding entitled as above having made informal representations to the Commission with reference to that portion of the Commission's order dated September 21, 1912, in the matter entitled as above which refers to the stoppage of main line passenger trains at

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defendant's depot at Third and Delaware streets in Berkeley, and the Commission having given further consideration to the matter, and being willing to modify its said order to the extent hereinafter indicated in order to give a trial to certain of the changes suggested by defendant,

It is hereby ordered as follows:

Paragraph 2 of this Commission's order in the proceeding entitled as above, dated September 21, 1912, is hereby amended so as to read as follows:

> "Defendant shall on and after November 11, 1912, stop at its present main line passenger depot at Third and Delaware streets, in Berkeley, all its main line intrastate passenger trains, except the train known as 'The Owl,' which train shall for the present not be required to stop at said station, provided that trains No. 49 and No. 50, known as the 'San Joaquin Valley Flyer,' trains No. 21 and No. 22, known as the 'Statesman,' trains No. 47 and No. 48, known as the 'El Dorado,' train No. 81, known as the 'Stockton Flyer,' and trains No. 83, No. 86 and No. 87, known as Bakersfield trains, shall stop on flag to take on and let off passengers. Also, the defendant shall within such time or as soon thereafter as possible, prepare and post time tables embodying the changes in passenger train schedules herein directed and file the same with this Commission in conformity with this order. After defendant has completed its new passenger depot at Third street and University avenue, all such passenger trains shall stop thereat instead of its present depot at Third and Delaware streets. The stoppage of trains west-bound as herein ordered shall be for the purpose of discharging passengers arriving at the main line station in Berkeley and not for the purpose of picking up passengers moving locally between Berkeley and Oakland or San Francisco. Defendant's published time cards shall show clearly all the trains which stop regularly and those which stop on flag at defendant's main line station in Berkeley, in accordance with the provisions of this order."

Dated at San Francisco, California, this 9th day of November, 1912.

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DECISION No. 328.

IN THE MATTER OF THE APPLICATION OF HUGH A. BOYLE FOR AN ORDER AUTHORIZING HIM TO CHANGE WATER RATES.

Application No. 212.

IN THE MATTER OF THE SUFFICIENCY AND QUALITY OF THE WATER SUPPLIED BY HUGH A. BOYLE, A PUBLIC UTILITY.

Case No. 306.

Decided November 12, 1912.

Re Application No. 212, applicant permitted to substitute a meter rate in place of the existing flat rate charges, applicant originally to bear the cost of installing meters.

Re Case No. 306, certain sources of water supply condemned and prohibited from being used until adequate development and protection have been made to prevent contamination.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Hugh A. Boyle is the owner of a water system which supplies a number of residents in and about Tiburon, Marin County, California. The water is obtained from a few springs which have their sources on the hill above Tiburon. The water is conveyed from certain of these springs into a large concrete tank from which a portion of the neighborhood is supplied. Other springs serve a large wood-stave tank which supplies the rest of the neighborhood, except the schoolhouse at Tiburon, which is served directly from a separate spring.

Some of Mr. Boyle's patrons are now being charged a meter rate of fifty (50) cents per hundred cubic feet. About eleven of the patrons are served upon a flat rate of one dollar and fifty cents ($1.50) per month.

On September 3, 1912, Hugh A. Boyle made application to this Commission for permission to put into effect for all of his patrons a meter rate of fifty (50) cents per hundred cubic feet, cancelling entirely the flat rate of one dollar and fifty cents ($1.50), and also to put into effect a fifteen dollar ($15) meter installation charge.

On September 25, 1912, in response to a petition filed with this Commission by a large number of the customers of Hugh A. Boyle, which petition complained of the insufficiency in the supply and the poor quality of water furnished by Hugh A. Boyle, the Commission, on its own initiative, instituted an investigation into both the sufficiency and

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the quality of the water furnished by said Hugh A. Boyle. The application and the investigation on the Commission's own initiative were consolidated and heard together at San Rafael, on September 30, 1912.

I will first consider the question of the rates presented in the application. Hugh A. Boyle asks that he be permitted to put into effect a meter rate of fifty (50) cents per hundred cubic feet for all of his customers. The purpose in putting this meter rate into effect is to place all of the patrons of said Hugh A. Boyle upon a uniform basis and also to check the wasteful use of water. The water supply of Hugh A. Boyle is limited so that wasteful and extravagant use by one patron may temporarily cripple the entire system. There was practically no opposition on the part of the patrons to the establishment of this meter rate, and as such a rate is bound to be beneficial to both the utility and to the patrons by checking the wasteful use of water and so conserving the supply, I have no hesitancy in recommending that this rate be allowed to go into effect.

The establishment of a fifteen ($15) dollar meter installation charge met with great opposition. At the hearing applicant voluntarily offered to reduce this charge to seven dollars and fifty cents ($7.50). The general question of a charge by water companies for service connections and meter installations is one which this Commission is at the present time investigating. The Commission has not yet, however, completed this investigation and is not in a position to announce its conclusions upon this question. Subsequent to the hearing, Hugh A. Boyle stated that he desired to conform to the conclusions of the Commission in this regard, and he requested that no decision be made upon this question of meter charges, as applied to this particular case, until the Commission's conclusions upon the general investigation were announced. Hugh A. Boyle will, in the mean time, bear the expense incident to the installation of the meters, and a readjustment of this charge between the utility and the patron may be made later, provided such readjustment is necessary to conform to the Commission's conclusions upon the general question of a charge for the installation of meters. I recommend that the plan outlined be adopted by the Commission, with the clear understanding, however, that such a plan is adopted merely as a means of solving this particular case and must not be taken as a precedent for future decisions.

I shall now consider the questions involved in the investigation by the Commission into the sufficiency and quality of the water furnished by Hugh A. Boyle. There was considerable testimony introduced at the hearing to the effect that the water had not been supplied regularly and that frequently the water supplied was not fit for drinking purposes. Upon closer questioning, however, it developed that at present there is no complaint against the sufficiency of the supply. Hugh A. Boyle explained that he had within two weeks prior to the hearing made

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various improvements in his system which would insure a continuous supply. I feel that there is no necessity to make any recommendation upon this particular question, as I feel assured that Hugh A. Boyle is now in a position to furnish a continuous supply and intends to do so.

There were, however, some astounding revelations made in regard to the quality of the water which Hugh A. Boyle was supplying to his patrons. I made a personal investigation of Mr. Boyle's system and found that while the springs which supply the concrete tank appear to be well protected, the springs which supply the wood-stave tank and the spring which supplies the schoolhouse come to the surface in the middle of open pastures and little or no protection has been furnished to insure the springs against surface contamination. Samples were taken of the water in the concrete tank and the water in the wood-stave tank and the water from the spring supplying the schoolhouse. These samples were analyzed and subjected to bacteriological tests by the State Hygienic Laboratory in Berkeley. The report rendered to the Commission upon this examination stated that while the water in the concrete tank was suitable for drinking purposes, the other samples submitted were very much polluted and unfit for drinking purposes. The Commission immediately wrote to Mr. Boyle, instructing him to discontinue supplying water from the wood-stave tank, and from the springs furnishing the tank, and from the spring furnishing the schoolhouse, and to serve all his patrons from the concrete tank. He was further instructed that the springs condemned should not be again used until adequate development and protection had been made to prevent contamination, and that it had been shown to the satisfaction of this Commission that the water taken from these springs was suitable for drinking purposes.

I cannot condemn too strongly the service by a public utility of water such as that supplied by Hugh A. Boyle from these springs, and I recommend that the order of this Commission reaffirm the instructions already given to Hugh A. Boyle.

I submit the following form of order:

ORDER.

Hugh A. Boyle, the owner of a water system supplying residents in and about Tiburon, having filed with this Commission an application for permission to put into effect to all of his customers a meter rate of fifty (50) cents per hundred cubic feet, and also to put into effect a fifteen ($15) dollar meter installation charge, and this Commission having, at the request of a number of the patrons of said Hugh A. Boyle, instituted, on its own initiative, an investigation into the sufficiency and quality of the water furnished by said Hugh A. Boyle, and a public hearing having been held upon all of these questions,

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It is hereby ordered that Hugh A. Boyle be and he hereby is authorized to put into effect a meter rate to all of his customers of fifty (50) cents per hundred cubic feet of water, such rate to become effective from the date that the meter is installed, which date shall not be later than November 30, 1912, for present patrons.

It is further ordered that pending announcement by this Commission upon its conclusions upon the general investigation into the question of a charge by water companies for service connections and meter installations, said Hugh A. Boyle shall bear the cost of installing meters for his patrons, and that said Hugh A. Boyle may later make application to this Commission for a readjustment as between himself and his patrons of the cost of installing the meters, provided such readjustment is necessary to conform to the conclusions of this Commission upon the general investigation of this question.

It is further ordered that said Hugh A. Boyle shall immediately discontinue serving water from the wood-stave tank and from the springs which supply this tank and also from the spring which has heretofore served the schoolhouse and that no water shall hereafter be supplied from any of these sources until such sources have been made perfectly sanitary by suitable development and protection to prevent contamination, and it has been shown to the satisfaction of this Commission that the water taken from these sources is suitable for drinking purposes, and said Hugh A. Boyle shall have obtained from this Commission permission to supply water from these springs.

And it is further ordered that until said Hugh A. Boyle shall have obtained permission to supply water from these springs, the persons heretofore supplied from these springs shall be furnished water from the concrete tank.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of November, 1912.

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DECISION No. 329.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE EXECUTION OF A SUPPLEMENTAL DEED OF TRUST TO HARRIS TRUST AND SAVINGS BANK AND LOS ANGELES TRUST AND SAVINGS BANK, TRUSTEES.

Application No. 280.

Decided November 13, 1912.

REPORT OF THE COMMISSION.

The San Diego Consolidated Gas and Electric Company having on March 1, 1909, executed and delivered to Harris Trust and Savings Bank, an Illinois corporation, and Los Angeles Trust Company, a California corporation (the name of which corporation was on September 10, 1909, changed to Los Angeles Trust and Savings Bank), a deed of trust to secure a bonded indebtedness of six million ($6,000,000) dollars, which deed of trust conveyed to said Harris Trust and Savings Bank and said Los Angeles Trust Company, as trustees, all the property of every kind then owned, or which thereafter might be acquired by the San Diego Consolidated Gas and Electric Company, and which deed of trust also recited, in article II, section 3:

> "The company covenants that, upon the written request of the trustee, or either of them, it will forthwith execute, acknowledge and deliver all such further and supplemental instruments, and will take all such further action, as may reasonably be required for better assuring and confirming unto the trustees the mortgaged property or any part thereof."

And the trustees having made written request to the San Diego Consolidated Gas and Electric Company that said company execute and deliver to Harris Trust and Savings Bank and Los Angeles Trust and Savings Bank, as trustees, a supplemental deed of trust conveying the property acquired by San Diego Consolidated Gas and Electric Company since March 1, 1909, the date of the original deed of trust, and San Diego Consolidated Gas and Electric Company having made application to this Commission for an order authorizing the execution by applicant of a supplemental deed of trust to Harris Trust and Savings Bank and Los Angeles Trust and Savings Bank, trustees, a copy of which deed of trust is attached to the application and marked "Exhibit A,"

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It is hereby ordered that San Diego Consolidated Gas and Electric Company be and the same hereby is authorized to execute to Harris Trust and Savings Bank and Los Angeles Trust and Savings Bank, trustees, a supplemental deed of trust, which deed of trust shall be drafted substantially in the form and terms of the supplemental deed of trust attached to the application in this proceeding and marked "Exhibit A."

By order of the Railroad Commission.

Dated at San Francisco, California, this 13th day of November, 1912.

DECISION NO. 330.

GEO. A. LONG
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 301.

Decided November 13, 1912.

Complaint alleges that respondent's rates on fresh meat, etc., between Imperial and Los Angeles are unjust and unreasonable *per se* and as compared with the rates on live stock. Also, asking the Commission to require respondent to reduce its tariffs permitting shippers to furnish refrigeration facilities.

Held, That the shipment of cattle is not a reliable basis for computing rates of the commodities in question.

Held, That the rates complained against are excessive, unjust and unreasonable.

Held, That while a formal order granting the prayer of complainant as regards the refrigeration of said commodities will not be entered, yet the Commission will expect the respondent to accord to complainant the rights in this respect which have been established by custom at other points.

P. E. Greer, and *Flint, Gray* and *Baker*, for complainant.
Geo. D. Squires, for defendant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

The complainant in this case is a shipper of live stock and has a packing-house located in Imperial, Imperial County, California. In his petition the reasonableness of the defendant's rates on fresh meat and packing-house products in C. L. and L. C. L. quantities between Imperial and Los Angeles and intermediate points is put in issue on the ground that such rates are unjust and unreasonable *per se* and also relatively as

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compared with complainant's rates on live stock at said points. The Commission is asked to order defendant to provide a rate of 35 cents per 100 pounds on fresh meat, carloads, and a rate of 30 cents per 100 pounds on packing-house products, carloads, for the transportation of these commodities from Imperial to Los Angeles and require the defendant to establish such other rates to intermediate points as the Commission may deem just and reasonable.

Complainant also prays that defendant be required to provide in its tariffs, and file with this Commission, a provision whereunder shippers will be permitted to furnish the necessary refrigeration of such shipments of fresh meat and packing-house products. The complainant ships live stock principally to Los Angeles and alleges because of the unreasonableness of the rates on the products of live cattle he is prohibited from slaughtering the live stock at his packing-house at Imperial and shipping the products to market outside of the Imperial Valley, and it is alleged that a rate of 35 cents per 100 pounds, on fresh meat, carloads, from Imperial to Los Angeles and a rate of 30 cents per 100 pounds on packing-house products, carloads, from Imperial to Los Angeles is necessary because of the fact that the products are in direct competition with the live stock and that the rates asked for would put these commodities more nearly on a parity in so far as transportation charges are concerned.

Evidence was introduced on behalf of the plaintiff by his chief witness, C. W. Patton, who has been engaged in the packing-house business for approximately thirty years, tending to show that at the rates desired the carrier would secure a greater return if the cattle were slaughtered at Imperial and thereafter the products transferred to Los Angeles, than would accrue to it if the same cattle were shipped alive from Imperial to Los Angeles. The defendant challenges this testimony, both on the ground that the basis of computation of complainant's witnesses is incorrect and the further ground that the value of the dressed meat and packing-house products is greater per car than the value of the live stock, and that the attendant risk is greater and that the cost of transportation is likewise greater.

I am impressed with the view that the shipment of cattle taken as a basis for the complainant's calculations is not sufficiently typical to furnish a reliable basis for the computation. It is in evidence that most of the cattle transported to Los Angeles from Imperial are fat cattle, and hence the average carload weight would be heavy, but I believe all the evidence in the case shows that the shipment used as a basis is somewhat heavier than the average herd of like number, and likewise that the weight of the refrigerator cars is considerably too low, but basing a computation upon all of the testimony in the case, I am of the opinion that a rate slightly in excess of the one asked for may be put in, and the

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carrier secure a greater revenue from each head of stock shipped if the slaughtering is done in Imperial than if the stock should be shipped alive to Los Angeles. There can be no question, and it is practically admitted, that the present rate on packing-house products, wherein they move under class rates, is too high, and the only problem is to determine just what the rate should be.

The question of what relationship, if any, should exist between packing-house products and live stock has been several times before the Interstate Commerce Commission, and it has also found its way into the courts. In the case of *Interstate Commerce Commission* vs. *Chicago Great Western Railway Company*, 141, Fed. 1003, the Circuit Court had before it questions similar to those involved in this case. The court there determined "that the cost of service in proportion to the value of both kinds of commodities was greater in carrying live stock" and further "it was also substantially agreed by the witnesses that the risk of carriage notwithstanding the double value of fresh meats was not as great in carrying fresh meat and packing-house products as in carrying live stock. * * * This is true on account of the damages for delay to live stock and additional damage in cases of wrecks."

The Supreme Court of the United States specifically approved these findings of the Circuit Court when the matter came up on appeal, and disposed of the contention of the carriers that the cost of transporting packing-house products is higher than the cost of transporting live stock, and that the risk is greater upon the former than the latter kind of traffic, in the same manner as I feel we should dispose of the same questions involved in this case.

I find from the evidence that the cost of transporting packing-house products is less, under the circumstances of this case, for the carriage of the product than for the live cattle from which the product is derived, and likewise that the risk to the carrier of transporting the live cattle is greater than for transporting the products which would be obtained from slaughtering the same cattle and transporting the products to the same market.

In regard to the prayer of the complainant that carriers be required to incorporate in tariffs a provision authorizing the refrigeration of shipments of fresh meat and packing-house products by shippers, I am of the opinion that the shippers of fresh meat and packing-house products from Imperial Valley points should be accorded the same facilities and privileges as are accorded the shippers of the same commodities at Los Angeles. Southern Pacific Company's G. F. D. Circular No. 211–T, C. R. C. No. 1573, provides a basis for rates on packing-house products, including fresh meats, less carloads, from Los Angeles to Calexico and intermediate points and it is therein provided "Shipments will be handled in refrigerator cars furnished and iced by shippers or at their

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expense. * * * Rates published do not include cost of refrigeration, which is to be furnished by or at the expense of the shippers. Rates named will apply from refrigerator plants at shipping points named." A like privilege is accorded to shippers from South San Francisco to San Francisco, Oakland, and San Jose, as shown in Southern Pacific Company's Commodity Specials No. 16–Y, reading as follows:

> "Applies on shipments under ice in refrigerator cars but does not include cost of ice."

While I shall not recommend a formal order granting the prayer of the complainant as regards the refrigeration of fresh meat and packing-house products by the shippers, yet I shall expect it to be done in accordance with the custom which has been found to exist at other points and which will amount to a discrimination against the packing-house at Imperial if the same privilege shall not be accorded to the complainant herein.

I have made careful computations in connection with the Commission's rate department, of the evidence in the case, and I am of the opinion that a rate of 37 cents per 100 pounds on fresh meat in carloads, and 32 cents per 100 pounds on packing-house products, carloads, from Imperial to Los Angeles are just and reasonable rates.

I therefore submit the following order:

ORDER.

Complaint having been filed by Geo. A. Long against the Southern Pacific Company as to the reasonableness of the Southern Pacific Company's rates on fresh meat and packing-house products in carload and less carload quantities between Imperial and Los Angeles, California, and intermediate points; and a hearing having been held and being fully apprised in the premises,

The Commission hereby finds as a fact that the carload rates on fresh meat and packing-house products complained of, set out in Southern Pacific Company's Local Freight Tariff No. 711 (C. R. C. No. 1515) are excessive, unjust and unreasonable; and

The Commission further finds as a fact that the following rates are just and reasonable rates, namely:

> 37 cents per 100 pounds on fresh meat, in carloads and
> 32 cents per 100 pounds on packing-house products, carloads,
> from Imperial to Los Angeles,

and basing its order on the foregoing findings and the findings in the opinion herein, *it is hereby ordered:*

1. That a rate of 37 cents per 100 pounds on fresh meat, in carloads, from Imperial to Los Angeles, and a rate of 32 cents per 100 pounds on packing-house products, carloads, from Imperial to Los Angeles be and

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the same are hereby established to be charged by the Southern Pacific Company, defendant herein, for the transportation of these commodities between these two points, such rates not to include icing.

It is further ordered that the Southern Pacific Company print, distribute and file with this Commission, on or before the effective date of this order a tariff setting out the rates established herein, said rates to become effective on the 10th day of December, 1912.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of November, 1912.

DECISION NO. 331.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA UTILITIES COMPANY FOR ORDER AUTHORIZING THE ISSUANCE OF BONDS.

Application No. 87.

Decided November 13, 1912.

The proposed purchase of stock of a land company by applicant so that all the money for the purchase and development of the land should be supplied by applicant in return for which only one third of the stock and the benefits on the final sale of the land should go to applicant and two thirds to the promoters, *Held* objectionable. If two thirds of the stock of the land company be transferred to the utility company the scheme as a whole, with certain restrictions, as described in the order, is a proper subject of the bond issue.

As the amount of water possible to be developed under the scheme of applicant is seriously questioned, but as a large quantity of water will be developed, although it may not be the entire amount expected, the sale of land is restricted to the land upon which water is available for irrigation.

The objection that all of the stock of applicant so issued to promoters just prior to the Public Utilities Act taking effect, removed by impounding all of said stock so that none of it will get in the hands of the public during the life of the bonds herein permitted to be issued.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by the Southern California Utilities Company for an order authorizing the issuance of $10,000,000 face value 6 per cent bonds, payable twenty-five years from their date, and authorizing applicant to mortgage its property to secure the payment of said bonds,

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and authorizing applicant to purchase and acquire the capital stock and properties of certain utility and other corporations with the proceeds from the sale of said bonds.

Applicant is a corporation organized in March, 1912, with authorized capital stock of $10,000,000, all common, all of which was issued prior to March 23, 1912.

The company has no tangible assets at this time and it is proposed to sell all of the $10,000,000 of bonds so as to net applicant at least $9,674,992 cash, and with this money to purchase certain existing properties and to construct dams, irrigation systems, power plants, etc.

The property to be purchased and described in the proposed Trust Deed on file herein is as follows: 9,993 shares out of a total issue of 10,000 shares, par value $1.00 each, of the capital stock of the Ramona Power and Irrigation Company, together with the assets of said company described as a canal line survey, land contained in certain reservoir sites, water rights, and the powerhouse site. There is filed with the application, as an exhibit, an offer on behalf of the Ramona Company, accepted by applicant, to sell this property to applicant for $350,000. It is asked that $40,000 in addition be allowed to be spent in the acquisition of this property for improvements, expense of perfecting its titles, etc.

The Whittier properties, consisting of:

Real property in the city of Hemet and an electric lighting, milling and power plant operated by W. F. Whittier, under the name of the Hemet Milling and Power Company.

Ninety-nine thousand nine hundred shares out of 100,000 shares of Lake Hemet Water Company, and the entire flume, pipe and ditch line system, water and water rights and all real and personal property of said company.

Two thousand seventy hundred and fifty shares out of a total issue of 3,000 shares, par value $20, of the Fairview Land and Water Company, together with the flume, pipe and ditch line system and all real and personal property of said company.

Two hundred and twenty-five shares out of a total issue of 250 shares, par value $100 each, of the Hemet Town Water Company, with the pipe line system, water rights and all real and personal property of said company.

Ninety-nine thousand nine hundred shares out of a total issue of 100,000 shares of the Hemet Land Company, together with all the real and personal property of said company.

For all of the above, known as the Whittier properties, applicant proposes to pay $1,417,992 in cash.

Applicant proposes to build and operate an irrigation system, including dams and reservoirs for impounding and holding water, and canals

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and other works through which to deliver this water to certain lands, and in connection with this water system to build and operate a hydro-electric power and generating and distributing system, the estimated cost of this water and electric system to be $4,117,000.

Applicant originally proposed to purchase for the sum of $3,150,000 capital stock of the California–Riverside Land Company in the amount of 31,500 shares out of a total authorized issue of 100,000 shares, par value $100 each. The money paid for said stock is to be used by the land company in the purchase of land irrigable under the system to be established by applicant, the maximum average purchase price of said land to be $80 per acre, totaling $2,400,000, and the balance of the cash to be paid for said stock, or $750,000, to be used in developing and improving said land.

This proposed purchase of stock of the land company by applicant so that all of the money for the purchase and development of the land should be supplied by applicant, in return for which only one third of the stock and the benefits on the final sale of said land should go to applicant and two thirds to the promoters of this enterprise was found objectionable. Numerous conferences with the representatives of applicant have been had and much delay has occurred, for which the applicant is solely to blame. Had a conclusion been reached immediately after the hearing in this matter, there would have been a conclusion adverse to applicant, as the information furnished at the hearing was wholly inadequate, and it was as a result of the desire of this Commission, manifested not only in this matter, but in all matters considered by it heretofore, to permit worthy enterprises to go forward, that instead of denying this application forthwith, applicant was given every opportunity to change objectionable features and to supply essential information.

The contention of applicant was that it would be impossible to obtain for the utility company any greater amount of the stock of the land company than was set aside for it in its application, but finally it has been conceded that the Commission may successfully demand that at least two thirds of this land company's stock be given to the utility company instead of approximately one third, as heretofore proposed.

If two thirds of the stock of the land company be transferred to the utility company, in my judgment the scheme as a whole with certain restrictions, hereafter mentioned, is a proper subject of the bond issue asked for. I have been influenced to this conclusion by the fact that the promoters have obtained for applicant the comparatively high price of 96 per cent of face for these bonds.

Considerable discussion has been had between the engineers of applicant and the engineers of this Commission as to the amount of water possible to be developed under the scheme of applicant, but as a large

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quantity of water will be developed, although it may not be the entire amount expected and hoped for by applicant, I recommend that in the order of this Commission such restriction be placed upon the sale of land that no more land be sold by applicant, or the land company, than water is developed to irrigate, and anybody buying land under this system may be assured of water to irrigate the same, or he may buy land knowing that water will not be obtained from this system.

This restriction is necessary in order to safeguard against the disastrous experiences of the past, where large bodies of people have been settled upon land upon the faith that water will be given them in sufficient quantities to properly develop and irrigate the same, only to find their hopes blasted and their investment gone.

The objection that all of the stock of applicant was issued to the promoters just prior to the going into effect of the Public Utilities Act will be removed by impounding all of said stock so that none of it will get into the hands of the public during the life of the bonds herein asked to be issued.

I recommend that with the modifications herein outlined, the applications be granted.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Southern California Utilities Company for an order authorizing the issue by said company of $10,000,000 face value of bonds of a date hereafter to be fixed, bearing interest at the rate of 6 per cent per annum, and payable twenty-five years from their date,

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the acquisition of property and the construction of facilities, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by Southern California Utilities Company of $10,000,000 face value of bonds of a date hereafter to be fixed, bearing interest at the rate of 6 per cent per annum and payable twenty-five years from their date, and does hereby authorize applicant to mortgage its property to secure the payment of said bonds.

Said bonds to be used under and in pursuance of the terms of a mortgage or deed of trust to be submitted before its execution for the approval of the Railroad Commission, and to be in form and substance substantially the same as the trust deed submitted with the application, such evidence of approval by the Commission to be evidenced by its supplemental order.

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Said bonds are to be issued upon the following conditions, not otherwise:

1. Southern California Utilities Company shall sell the bonds hereby authorized so as to net said company at least $9,674,992, plus accrued interest at the time of their delivery to the purchasers.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

(*a*) For the purchase of all of the rights and property of the Ramona Power and Irrigation Company, as set out in the mortgage and trust deed, not to exceed	$350,000 00
(*b*) For the purpose of improving and perfecting the title to the property of the above company	40,000 00
(*c*) For the purchase and acquisition of the "Whittier Properties" as described in the mortgage or trust deed, not to exceed	1,417,992 00
(*d*) For the acquisition and purchase of two thirds of the total authorized capital stock of the California-Riverside Land Company	3,150,000 00
(*e*) For the construction and development of the impounding, irrigating and electric power generating plant of applicant as set out in the application, mortgage or trust deed and exhibits on file herein	4,117,000 00
(*f*) For interest on said bonds during the period of construction in an amount not to exceed	600,000 00

3. The entire capital stock of Southern California Utilities Company, heretofore issued, shall be impounded or put in escrow or in trust so that for a period of twenty-five years said stock shall be retained in the hands of a trustee or escrow man, and shall not for said period be divided or distributed to the public, and before any of the money derived from the sale of bonds may be spent by applicant, satisfactory evidence of such impounding shall be furnished the Commission.

4. There shall be submitted to this Commission for its approval, to be evidenced by a supplemental order, a trust deed, executed or to be executed by the California–Riverside Land Company, wherein, among others, there shall be a clause placing all of the land owned or to be hereafter acquired by said company under the lien of the bonds hereby authorized to be issued, provided that said clause may contain a stipulation that any of said land may be released from said lien upon the deposit with the trustee designated in the mortgage or trust deed to be executed by applicant to secure the payment of the bonds hereby authorized to be issued, of one third the net sale price of said lands, the money to be deposited per acre with the trustee not to be less in any instance than $175.

5. The trust deed to be executed by said land company shall provide that said company shall not sell any land until it shall have received from the Southern California Utilities Company a certificate approved by this Commission, to the effect that there is available and will be

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delivered to the land proposed to be sold, water in the following amounts and quantities:

(*a*) For the growing of alfalfa hay or garden truck, one inch of water equal to 1/50 cubic feet per second continuous flow 200 days of the irrigating season for each 3 acres of land.

(*b*) For the growing of deciduous fruit trees and similar vegetation, not to exceed one inch of water under a 4-inch pressure, to 10 acres.

(*c*) For the growing of citrus fruit, one inch of water measured under a 4-inch pressure, to not more than 8 acres.

6. Land may be sold for which no water can be furnished upon a conveyance or contract to be approved by this Commission before its execution, said contract or conveyance to contain a statement in appropriate words that no water will be furnished.

7. All of the land purchased by said land company shall be within the description set out in the proposed trust deed of applicant on file herein.

8. No money derived from the sale of the bonds hereby authorized to be issued shall be spent except such sums as are necessary to make the studies and to obtain the data hereafter mentioned, until the Commission shall have been furnished with the following:

(*a*) Full and complete detailed studies of the safe yield of the various units comprising this system.

(*b*) Full and complete estimates of the acreage which this safe yield will serve and where located.

(*c*) Full and complete details of the hydroelectric power which it is possible to develop under the determined yield.

(*d*) Complete detailed plans and estimates of construction cost based on this safe net yield.

9. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys or property realized therefrom and the use and application of such moneys or property. And in addition thereto said company shall submit to this Commission for its approval before the execution thereof all contracts for materials and labor, equipment of all kind and all materials, labor and property involving costs in excess of $1,000. The authority hereby given to issue said bonds shall apply only to bonds issued by said company on or before the first day of December, 1913.

The payment of the fees upon the issuance of this order is hereby made a condition precedent to the taking effect of this order.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of November, 1912.

DECISION NO. 332.

IN THE MATTER OF THE APPLICATION OF SAN JOSE TERMINAL RAILWAY COMPANY FOR AUTHORITY TO ISSUE BONDS.

Application No. 57.

Decided November 12, 1912.

Ralph A. Hathorn, for applicant.

REPORT OF THE COMMISSION.

It appearing that this Commission has heretofore, to wit, on the 9th day of November, 1912, made and entered its supplemental order herein, and that paragraph 4 of said order is as follows:

> "The moneys derived by applicant from the sale of its bonds and preferred stock, as herein authorized, in excess of the amounts necessary for the purposes and in the amounts specified in applicant's said Exhibit X, shall be kept by applicant in its treasury and shall not be expended, unless applicant shall first have secured from this Commission an order authorizing the expenditure and specifying the purposes and amounts thereof."

And said San Jose Terminal Railway Company having applied to this Commission for permission to make expenditure of the $25,000, to be received upon the sale of its preferred stock, as specified in said supplemental order, and it appearing to the Commission that such expenditures are proper,

It is ordered that said San Jose Terminal Railway Company is hereby authorized to make the following expenditures from the money received upon the sale of the preferred stock specified in said supplemental order:

1.	For the discharge of applicant's obligations to Mahoney Brothers for construction, to wit, clearing and grading	$10,204 39
2.	For construction expense, being sundry current bills and obligations now due and payable	1,000 00
3.	For construction expenses of sundry incidental character to be incurred	2,000 00
4.	For construction account for ties, rails and labor	11,795 61
	Total	$25,000 00

Dated at San Francisco, California, this 12th day of November, 1912.

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DECISION No. 333.

IN THE MATTER OF THE APPLICATION OF LAKE HEMET WATER COMPANY ET AL. FOR ORDER AUTHORIZING SALE OF PROPERTY AND FRANCHISES AND CAPITAL STOCK UNDER SECTION 51*a* AND 51*b* OF THE PUBLIC UTILITIES ACT.

Application No. 88.

Decided November 13, 1912.

The properties of applicants are to be transferred to and merged by the public utilities company into a large irrigation land and electric power enterprise, as discussed in Application No. 87.

***Held*, That the proposed sale and transfer of property to the larger corporation will result in benefit to all concerned, as it will weld them into a unit and permit of their further development.**

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by Lake Hemet Water Company, Fairview Land and Water Company, Hemet Town Water Company, W. F. Whittier, W. S. Peloubet, and Southern California Utilities Company, for an order authorizing said five first-named petitioners to sell and said Southern California Utilities Company to buy the capital stock, franchises and property now belonging to said five first-named petitioners.

The property to be sold, with the prices agreed to be paid therefor, is as follows:

Lake Hemet Water Company.	
99,900 shares out of 100,000 shares of capital stock, franchises and all of the property and assets of said company, including the entire flume, pipe and ditch line system, water and water rights, and real estate	$800,864 06
Fairview Land and Water Company.	
2,750 shares out of a total issue of 3,000 shares of the capital stock, franchises and all of the property and assets of said company, including the flume, pipe and ditch line system and real estate	151,488 92
Hemet Town Water Company.	
225 shares out of a total issue of 250 shares of the capital stock, franchises and all of the property and assets of said company, including pipe line system, water and water rights and real estate	51,462 12
Hemet Land Company.	
99,900 shares out of a total issue of 100,000 shares of the capital stock, together with all of the real and personal property of said company	137,875 58

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Properties of W. F. Whittier.

Bank of Hemet, including all of its capital stock and assets	$144,998 00
Hemet Milling and Power Company, including real and personal property, electric lighting and milling plant	35,161 33
Hotel Hemet, including building and personal property and real estate	52,899 75
Opera House, including real estate, building and personal property	35,000 00
Real estate, building, personal property and improvements	8,092 94
Value of clearing land by W. F. Whittier, as agreed	150 00
Total sale price of all of the above properties	$4,417,992 70

W. S. Peloubet joins in this application because of an option held by him upon all of the foregoing properties, and which option has been assigned to the Southern California Utilities Company.

For a more detailed description of the above properties reference is had to the "Statement of assets filed with the application herein."

It is proposed by Southern California Utilities Company to purchase these properties and merge them into a large irrigation land and electric power enterprise, which is fully discussed in an order this day rendered in the matter of application No. 87 of Southern California Utilities Company for an order authorizing the issuance of bonds.

It appears that this proposed sale and transfer of property to the larger corporation will result in benefit to all concerned, as it will weld them into a unit and permit of their further development.

It should be clearly understood that the prices for which these properties are sold are not to be considered the true value of said properties in any rate-fixing proceeding hereafter to be had.

I recommend that the application be granted.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Lake Hemet Water Company, Fairview Land and Water Company, Hemet Town Water Company, W. F. Whittier, W. S. Peloubet, and Southern California Utilities Company for an order authorizing said five first-named petitioners to sell and said Southern California Utilities Company to buy certain capital stock, franchises and property, hereafter set out,

And a hearing having been duly held and it appearing to the Commission that it is to the public interest that said application be granted,

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize Lake Hemet Water Company, Fairview Land and Water Company, Hemet Town Water Company, W. F. Whittier, and W. S. Peloubet to sell and Southern California Utilities

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Company to buy for the total price of $4,117,992.70, the following described capital stock, franchises and property:

Lake Hemet Water Company.

99,900 shares out of 100,000 shares of capital stock, franchises and all of the property and assets of said company, including the entire flume, pipe line and ditch line system, water and water rights, and real estate	$800,864 06

Fairview Land and Water Company.

2,750 shares out of a total issue of 3,000 shares of the capital stock, franchises and all of the property and assets of said company, including the flume, pipe and ditch line system and real estate	151,488 92

Hemet Town Water Company.

225 shares out of a total issue of 250 shares of the capital stock, franchises and all of the property and assets of said company, including pipe line system, water and water rights and real estate	51,462 12

Hemet Land Company.

99,900 shares out of a total issue of 100,000 shares of the capital stock, together with all of the real and personal property of said company	137,875 58

Properties of W. F. Whittier.

Bank of Hemet, including all of its capital stock and assets	144,988 00
Hemet Milling and Power Company, including real and personal property, electric lighting and milling plant	35,161 33
Hotel Hemet, including building and personal property and real estate	52,899 75
Opera House, including real estate, building and personal property	35,000 00
Real estate, building, personal property and improvements	8,092 94
Value of clearing land by W. F. Whittier, as agreed	150 00

All as more particularly described and itemized in the statement of assets filed with the application herein, to which statement reference is hereby made.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of November, 1912.

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DECISION NO. 334.

IN THE MATTER OF THE ONE-WAY FARES OF NORTHWESTERN PACIFIC RAILROAD COMPANY FOR THE TRANSPORTATION OF PASSENGERS BETWEEN SAN FRANCISCO AND SAN RAFAEL, CALIFORNIA, AND INTERMEDIATE POINTS, AND OF THE PRACTICE OF NORTHWESTERN PACIFIC RAILROAD COMPANY IN CHARGING FOR THE TRANSPORTATION OF PASSENGERS FARES LESS THAN THE FARES PROVIDED IN ITS PASSENGER FARE SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Case No. 333.

Decided November 15, 1912.

Ordering investigation by the Commission on its own motion into one-way fares charged by respondent for carrying passengers between San Francisco and San Rafael.

REPORT OF THE COMMISSION.

The Commission being of the opinion that it is necessary to make an investigation into the one-way fares of Northwestern Pacific Railroad Company for the transportation of passengers between San Francisco and San Rafael, California, and intermediate points, and of the practice of the Northwestern Pacific Railroad Company in charging for the transportation of passengers, fares less than the fares provided in its passenger fare schedules on file with this Commission,

It is hereby ordered that this Commission institute, on its own initiative, under the provisions of section 60 of the Public Utilities Act, an inquiry into the matter entitled as above, and that the Secretary of this Commission be and he hereby is instructed to notify said Northwestern Pacific Railroad Company to appear before this Commission on Monday, December 9, 1912, at 10 o'clock a. m., in the office of the Commission, 833 Market street, San Francisco, California, before Commissioners Edgerton and Loveland, at which time and place said Northwestern Pacific Railroad Company may appear and be heard upon the matter entitled as above.

And be it further ordered that if said Northwestern Pacific Railroad Company does not appear at said time and place, it shall be deemed guilty of contempt of this Commission, and subject to the penalties prescribed by said Public Utilities Act.

Dated at San Francisco, California, this 15th day of November, 1912.

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DECISION No. 335.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF YARD TRACKS AT GRADE ACROSS ALLISON ROAD AND WATSONVILLE-MONTEREY ROAD PUBLIC HIGHWAYS, IN THE TOWN OF PAJARO, MONTEREY COUNTY, CALIFORNIA.

Application No. 241.

Decided November 16, 1912.

H. C. Booth, for Southern Pacific Company.

R. A. Stirling, for Board of Supervisors, Monterey County, California.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On September 26, 1912, Southern Pacific Company, a corporation, filed with the Commission an application for an order authorizing the construction of eleven (11) yard tracks at grade across the Allison road, a public highway, near the middle of the Pajaro yard, and eight (8) yard tracks at grade across the Watsonville-Monterey road, a public highway, at the east end of Pajaro yard, all in the town of Pajaro, Monterey County, California. A hearing was held at Watsonville, Santa Cruz County, California, on October 19, 1912, at which both applicant and the board of supervisors of Monterey County, California, were represented.

The testimony showed that the track extensions as now proposed by applicant are required to hereafter properly handle the large and increasing volume of business which this company receives at Pajaro station and yards. In order to make the necessary extensions to the roundhouse and yard facilities at this point, applicant must construct the proposed tracks across the present public highways crossing the yards, as stated in the application.

The Allison road across which it is proposed to extend eleven (11) yard tracks is traveled but little by the public, and, in my opinion, the placing of a flagman at this crossing during the hours of daylight will be sufficient protection for the public against the movement of trains for a time at least.

The Watsonville-Monterey road across which it is proposed to extend eight (8) additional yard tracks is one of the most important public roads in Monterey County, and is very extensively used by the public.

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If additional tracks are built they will increase greatly the dangers and obstructions to this traffic. It is my opinion that such tracks should not be permitted unless a change is made in the alignment of this road or a separation of grades effected by the construction of an overhead highway bridge. It is practicable to change the present crossing westerly around the west end of the Pajaro yards of applicant, and cross only two (2) tracks, in which case a grade crossing should be permitted, but, in my opinion, a permanent grade crossing should not be allowed at the present site of this crossing if eight (8) additional tracks are to be built.

Since applicant desires and is now prepared to go ahead with the work of reconstructing its yards and facilities at Pajaro, and has not at this time the right of way necessary to change the alignment of the road westerly, as suggested, nor prepared plans for an overhead bridge for said highway over its yards, it should be authorized to proceed with the construction of its tracks at grade, as prayed for at this time, provided that within one (1) year from this date it shall either alter the alignment of the road, as is suggested, or shall construct and complete an overhead highway bridge over its yards, which shall be approved by the Commission.

Until the overhead bridge is completed and is in use by the public, a flagman should be provided by applicant during the hours of daylight for the protection of this crossing.

Also your order should provide that the highway traffic over both the Allison road and the Watsonville–Monterey road crossings shall not be blocked by the trains, engines, or cars of applicant for a longer period than five (5) minutes at any one time.

Upon the basis above suggested, I therefore recommend that the application be granted and submit the following form of order:

ORDER.

Southern Pacific Company, a corporation, having on September 26, 1912, filed with the Commission an application for an order authorizing the construction of eleven (11) yard tracks at grade across Allison road and eight (8) yard tracks at grade across Watsonville–Monterey road, public highways, in the town of Pajaro, Monterey County, California, and a hearing having been held upon the application, at which all parties interested were duly represented; and it appearing to the Commission that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct its yard tracks across public highways in the town of Pajaro, Monterey County, California, as prayed for in its

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application, and as shown on the maps and plats attached thereto, subject to the following conditions, to wit:

(1) The entire cost of constructing the crossings, together with the expense of their protection and maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant, except as hereinafter provided.

(2) The crossings at Allison road are hereby authorized to be made at grade, provided the company shall maintain at its own expense a watchman on duty at the crossing for the protection of the public against the movement of trains and cars during the hours of daylight.

(3) The crossings with the Watsonville–Monterey road are hereby authorized to be made at grade, provided that applicant shall within one (1) year from the date of this order, either secure the necessary right of way and, with the consent of the board of supervisors of Monterey County, California, change the alignment of the present road across the tracks of applicant westerly around the west end of its yard, crossing only two tracks, or shall construct an overhead highway bridge at its present location, same to be built in accordance with plans and specifications which shall be submitted to and approved by this Commission. Said bridge shall be of a width not less than twenty (20) feet and have grades of approach at each end not exceeding eight (8) per cent, and shall give a minimum clearance over all tracks of applicant of not less than twenty-two (22) feet. Said bridge shall be constructed and shall hereafter be maintained at the expense of applicant. The approaches to the bridge shall be constructed at the cost of applicant, but shall be maintained at the expense of Monterey County.

(4) Until the alteration of the alignment or completion of the overhead bridge provided hereinbefore in section 3, applicant shall maintain a flagman during the hours of daylight at said crossings for the protection of the public. Also applicant shall not with its trains, engines or cars, block the passage of highway traffic over said crossings, including the Allison road crossings, for a longer period than five (5) minutes at any one time.

(5) The Commission reserves the right hereafter to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, public convenience and necessity demand.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of November, 1912.

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DECISION NO. 336.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO AND WOODLAND RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE OVER THE TRACKS OPERATED BY SOUTHERN PACIFIC COMPANY AT MIKON, YOLO COUNTY, CALIFORNIA.

Application No. 37.

Decided November 18, 1912.

REPORT OF THE COMMISSION.

ORDER APPROVING PLANS FOR INTERLOCKING DEVICE AT CROSSINGS.

In pursuance of requirements of section 2, subdivision (*h*), of order issued by this Commission in the above-entitled cause on May 30, 1912, the Southern Pacific Company and Sacramento and Woodland Railroad Company having on November 12, 1912, filed with the Commission their joint application for approval of and submitted plans and specifications for an interlocking device, to be constructed at the grade crossings of the railroads of said companies at Mikon, Yolo County, California; and it appearing to the Commission that the plans and specifications for said device as submitted are satisfactory, and said device when completed will protect the crossings, as called for in the Commission's order.

It is hereby ordered that the plans and specifications for said interlocking device submitted by said companies be and the same are hereby approved and said companies are hereby authorized to proceed with the construction of said device in accordance with same.

Dated at San Francisco, California, this 18th day of November, 1912.

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DECISION NO. 337.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION AT GRADE OF A DRILL TRACK ACROSS BUTTE STREET, IN THE TOWN OF MOJAVE, KERN COUNTY, CALIFORNIA.

Application No. 289.

Decided November 18, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having, on November 13, 1912, filed with the Commission its application for permission to construct a drill track across Butte street, in the town of Mojave, Kern County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid a grade crossing with said street, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a drill track at grade across Butte street, in the town of Mojave, Kern County, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Applicant shall provide at its own expense the necessary plank or guardrails for said crossing and shall ballast the crossing, including the approaches thereto, to a depth of not less than six (6) inches with first-class stone or gravel ballast.

(3) Said crossing shall be made of a width not less than forty-eight (48) feet and with grades of approach not exceeding eight (8) per cent.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 18th day of November, 1912.

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DECISION No. 338.

IN THE MATTER OF THE APPLICATION OF MOUNT WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS OF BONDS.

Application No. 287.

Decided November 18, 1912.

Jesse W. Lilienthal, for Mount Whitney Power and Electric Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Mount Whitney Power and Electric Company applies for an order of this Commission authorizing it to issue its first mortgage six per cent bonds of the face value of $250,000 to provide funds for the reimbursement of its treasury for money expended from income; for new hydroelectric construction work; and for extensions to its distributing system.

Applicant is engaged in the business of selling electric power in Tulare and Kern counties. It has a present capacity of approximately 10,000 horsepower and is selling practically its entire output. It is engaged in the construction of additional hydroelectric plants on the Kaweah River in Tulare County, from which it figures to add approximately 9,500 horsepower to its present supply.

Applicant is unable to state at this time just what portion of the proceeds from the sale of the $250,000 of bonds will be devoted to the various items of contemplated expenditure. It submits the following:

For reimbursement of income for capital expenditures and presents in connection therewith a detailed statement.	$70,000 00
For new hydroelectric construction, including reservoirs, Kaweah Power Plant No. 3, Kaweah Power Plant No. 5, transmission line, roads, and appurtenances	1,145,380 00

Applicant presents a summary of the expenditures contemplated under this item. Applicant states that it cannot at this time submit a list of proposed extensions of distributing lines as these extensions are required from time to time in the ordinary course of the development of its business.

Applicant proposes, after reimbursing its treasury in the aforesaid amount of $70,000, to expend the balance, in so far as it may be applied, to the contemplated hydroelectric development in the sum of $1,145,380 and to such extensions in its distributing lines as may be necessary in the conduct of its business.

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Applicant has an authorized stock issue of $5,000,000, of which there has been issued $750,000 of 7 per cent cumulative preferred and $1,875,000 common stock. Applicant has an authorized bond issue in the sum of $5,000,000, of which there have been issued bonds to the amount of $1,575,000.

Applicant did not present a complete appraisement of its properties to date, but produced ample evidence to demonstrate that a wide margin of security exists between the value of its property and its bonded indebtedness. It is clear that the projected development is urgently required by applicant's increasing business, and it is equally clear that applicant's financial condition is such as to enable it to bear easily the new obligations imposed by the proposed addition to its bonded indebtedness.

To enable the Commission to make an engineering study of the proposed hydroelectric development and to enable the Commission to pass readily on the work as further applications are made for bond issues, Mount Whitney Power and Electric Company should file with the Commission an engineering statement in full detail of the construction involved in the project embracing the reservoir on Wolverton Creek, Kaweah Power Plant No. 3, Kaweah Power Plant No. 5, transmission line, roads and appurtenances. This statement should contain cost items wherever actually incurred and estimates of cost of work to be done.

The bonds hereby applied for are to be issued under applicant's first mortgage dated October 1, 1909, which provides that bonds may be issued up to only eighty per cent of the cost of the construction work, and imposes other conditions designed to safeguard the indebtedness.

I recommend that the application be granted and submit herewith the following form of order:

ORDER.

Mount Whitney Power and Electric Company having applied to the Railroad Commission for an order authorizing the issuance by said company of bonds of the amount of $250,000 face value, payable on the first day of October, 1939, under the terms and conditions set out in its first mortgage to Bankers' Trust Company of New York, dated October 1, 1909, a copy of which is duly on file with this Commisson and to which reference is hereby made, said bonds to bear interest at the rate of six per cent per annum; and a hearing having been held and it appearing that the money to be procured from the sale of said bonds is necessary to and reasonably required by Mount Whitney Power and Electric Company for the acquisition of property, for the construction, completion, extension and improvement of its facilities and for the reimbursement for money expended from income for the construction, completion, extension and improvement of its facilities; and it further

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appearing that said purposes are not in whole or in part reasonably chargeable to operating expenses or income,

It is hereby ordered that Mount Whitney Power and Electric Company, the applicant herein, be and is authorized to issue $250,000 face value of principal of said bonds, payable on the first day of October, 1939, under the terms and conditions set out in its first mortgage to Bankers' Trust Company of New York, dated October 1, 1909, said bonds to bear interest at the rate of six per cent per annum, on the following conditions and not otherwise:

(1) Mount Whitney Power and Electric Company is hereby authorized to sell said bonds at not less than ninety-five per cent of their face value and accrued interest thereon.

(2) The proceeds from the sale of said bonds shall be used for the following purposes:

(*a*) The reimbursement of applicant for money expended from income within the past five years next preceding the application herein in the sum of $70,000, embracing items as set forth in detail in a certificate filed with this Commission by Mount Whitney Power and Electric Company, dated November 14th and addressed to Bankers' Trust Company of New York.

(*b*) The construction of the following, in so far as the money may apply:

The Wolverton Creek reservoir	$102,820 00
Kaweah Power Plant No. 3	320,000 00
Kaweah Power Plant No. 5	522,000 00
Transmission line	115,000 00

(*c*) For extensions to applicant's distributing system as required in the ordinary course of the development of its business.

(3) Mount Whitney Power and Electric Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(4) The authority hereby given to issue such bonds shall apply only to bonds issued by Mount Whitney Power and Electric Company on or before the 30th day of October, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of November, 1912.

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DECISION No. 339.

IN THE MATTER OF THE APPLICATION OF F. W. GOMPH, AGENT FOR CARRIERS, FOR PERMISSION TO ADVANCE THE ESTIMATED WEIGHT ON MINERAL ORE IN PACIFIC FREIGHT TARIFF BUREAU CIRCULAR 3–C, C. R. C. 66.

Application No. 271.

Decided November 18, 1912.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On March 26, 1912, F. W. Gomph, as agent for carriers, parties to Pacific Freight Tariff Bureau Circular No. 3–B, C. R. C. No. 43, filed an application with this Commission for permission to advance from 69 pounds per cubic foot to 130 pounds per cubic foot, the estimated weight on mineral ore, to be used when no facilities are available for obtaining actual weight.

On November 5, 1912, this application was amended and permission was requested to cancel in its entirety the item, of Pacific Freight Tariff Bureau Circular No. 3–C, C. R. C. No. 66 of F. W. Gomph, agent (which circular canceled Pacific Freight Tariff Bureau Circular 3–B, C. R. C. No. 43), providing an estimated weight on mineral ore to be used when no facilities are available for obtaining actual weight, the carriers having found upon investigation that there was no movement of ores between points in California at which there are no facilities for obtaining the actual weight.

The applicant testified that the ore moves from producing points to various smelters and the actual weight, as ascertained by the scales of the smelter, is used by the carrier in determining the amount of freight charges. Therefore there is now no reason for providing an estimated weight.

There was no testimony or evidence offered to controvert the statement of the applicant, and I therefore recommend that the application be granted and that the following form of order be issued.

ORDER.

F. W. Gomph, agent of carriers, parties to Pacific Freight Tariff Bureau Circular C. R. C. No. 66, having filed with this Commission application for permission to cancel entirely Item 275 thereof, providing an estimated weight of 69 pounds per cubic foot on mineral ore, to be used when no facilities are provided for obtaining actual weight; and it

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appearing to the Commission that no shipper or receiver of freight would be adversely affected because of cancellation of said provision,

It is hereby ordered that F. W. Gomph, agent for carriers, parties to Pacific Freight Tariff Bureau Circular No. 3-C, C. R. C. No. 66, be and is hereby granted permission to cancel Item 275 thereof, providing estimated weight of 69 pounds per cubic foot on mineral ore, to be used when no facilities are provided for obtaining actual weight, as it applies to traffic between points in California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of November, 1912.

DECISION NO. 340.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS.

Application No. 246.

Decided November 18, 1912.

Applicant asking for a bond issue intending to use the proceeds to build an extension of its railroad. It has been impossible to determine with any exactness, from the data furnished by applicant, what the physical values of its properties are, and as it is apparent that serious and costly delay in constructing this road might result if action on this application were delayed for a period of several months, which would be needed to make a physical valuation, *held* that, in view of the undoubted benefits to be realized by applicant and the public as the result of said extension, and considering the guarantees provided by the financiers back of the project, an order allowing bonds to be sold for the building of this extension should be made.

An assurance required of said financiers, specifically named, of the payment of bond interest until the road of applicant earned sufficient to meet its obligations, said assurance to be either personally made or by way of an appropriate fund.

Charles W. Slack and *T. T. C. Gregory*, for applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by Northern Electric Railway Company for an order authorizing the validation of $5,104,000 face value of its bonds heretofore issued for the purpose of being pledged as collateral security

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for loans, and authorizing the issue and sale of $8,000,000 face value of its bonds and the issue and sale of $2,604,000 face value of its bonds now pledged as security, and the issue and sale of $225,000 face value of its bonds, and authorizing the execution of an indenture of amendment and supplement to its trust deed.

The condition of the capitalization of applicant is as follows:

Bonds of applicant:	
Authorized	$25,000,000 00
Outstanding	171,000 00
Issued as collateral	5,001,000 00
Underlying bonds, closed issue:	
Outstanding	2,026,000 00
Issued as collateral	1,569,000 00
In escrow for exchange of Chico Electric Railway bonds	46,000 00
Floating indebtedness as of June, 1912	5,159,671 35
Capital stock:	
Authorized	25,000,000 00
Issued	25,000,000 00

Applicant is engaged in the operation of a standard gauge electric railway in the counties of Glenn, Butte, Sutter, Yuba, and Sacramento, with several branches in the counties named.

Its line now terminates at Sacramento, and it desires to effect a direct connection over its own lines between the city of Sacramento and all the territory through which it operates with the city of San Francisco and territory intervening between Sacramento and San Francisco, so as to provide a continuous service over its own lines between San Francisco and all points which it serves. Its plan is to extend its line from Sacramento to the city of Vallejo, in the county of Solano, thence by line of boats to conduct freight and passengers to San Francisco.

Arrangements have been made to sell a portion or all of the proposed bond issue in Europe, and hence request is made for authorization by this Commission to execute an indenture of amendment and supplement to trust deed, dated December 2, 1907, permitting the bonds of the original authorization to be issued in foreign moneys the equivalent of the face value of the bonds authorized in the original trust deed. Applicant has filed a copy of this proposed indenture of amendment and supplement, and desires to issue bonds under its terms.

The building of this extension will be of great benefit to the road as a whole because it will provide a continuous service from the point of origin to destination, giving applicant the benefit of the entire income from the haul. In addition there will be a considerable amount of new territory served between San Francisco and Sacramento.

It has been impossible to determine with any exactness, from the data furnished by applicant, what the physical values of its properties are, and as it is apparent that serious and costly delay in constructing this road might result if action on this application were delayed for a

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period of several months, which would be needed to make the physical valuation, the conclusion has been reached that in view of the undoubted benefits to be realized by applicant and the public through the bringing of this line to San Francisco, and considering the guarantees provided by the financiers back of this project, an order allowing bonds to be sold for the building of this extension should be made.

There should be an assurance of the payment of bond interest until the road of applicant earns sufficient to meet its obligations, and to that end the financiers spoken of above, and who are E. R. Lilienthal, E. J. de Sabla, Jr., Louis Sloss, and W. P. Hammon, should either personally or by way of an appropriate fund guarantee the payment of the interest of applicant's bonds for a period of ten years.

In order to provide that the financial condition of applicant will grow constantly better, at least $750,000 of its bonded indebtedness should be amortized over a period of not longer than ten years, and this should be accomplished either by retiring that amount of bonds or by the investment of that amount of money in the properties during this period. This result should be guaranteed by the same financiers above mentioned.

Applicant proposes to sell $8,000,000 of its bonds for the price of not less than 80 per cent of the face value. With the money derived from $5,500,000 thereof it proposes to build its line from Sacramento to Vallejo, and from the proceeds of $2,500,000 thereof proposes to pay off a part of its floating indebtedness and thereby release and have returned to it $2,500,000 face value of its bonds now held as collateral.

Applicant has issued and pledged as collateral certain of its bonds prior to March 23d, and thereafter received back said bonds and subsequent to March 23, 1912, under a misapprehension of the law, again issued and pledged said bonds without the authorization of this Commission. It has now requested that this latter issuance of said bonds be validated, and as it appears clear that such validation would only maintain the status of applicant, this request should be granted.

Applicant had in June, 1912, a floating indebtedness of $5,159,671, which is drawing interest at a greater rate than is proposed to be paid on the bonds asked to be sold, hence the conversion of floating indebtedness into a bonded indebtedness will be of benefit to the corporation, not only by way of reducing interest, but also by way of extending the time in which the money must be paid. This reasoning applies to the request of applicant that it be allowed to sell $2,604,000 face value of its bonds which will remain pledged as collateral and with the proceeds from the sale of which bonds a large part of the remaining floating indebtedness of applicant is to be paid, but in order that a decided benefit will result from this latter sale of bonds, it should be provided that they be sold at not less than 85 per cent of their face value.

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Applicant's final request is that it be allowed to issue and sell $225,000 face value of bonds in addition to those heretofore mentioned, for the purpose of providing money for improvements made and to be made to its existing and operating roads. These improvements consist of various items of stations built, switching tracks constructed, etc., provided that these bonds are sold at a minimum of 85 per cent of their face value, this request should be granted.

The following form of order is herewith submitted:

ORDER.

Application having been made to the Railroad Commission of the State of California by Northern Electric Railway Company for an order authorizing the execution of an indenture of amendment and supplement to its existing trust deed, and authorizing the validation of $5,104,000 face value of its bonds, heretofore issued for the purpose of being pledged as collateral security for loans, and authorizing the issue and sale of $8,000,000 face value of its bonds and authorizing the issue and sale of $2,604,000 face value of its bonds now pledged as collateral security for loans and authorizing the issue and sale of $225,000 face value of its bonds;

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the discharge of its obligations and for the construction of its plant and appliances, and that the purposes for which the proceeds of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered by the Railroad Commission of the State of California:

1. Northern Electric Railway Company is hereby authorized to execute and deliver indenture of amendment and supplement to its deed of trust to Mercantile Trust Company of San Francisco, as trustee, dated December 2, 1907, in form and substance substantially identical with the indenture of amendment and supplement heretofore filed in this proceeding. A certified copy of said indenture of amendment and supplement as executed shall be filed with this Commission before any of the bonds hereby authorized are issued thereunder.

2. All of the bonds issued under the authority of this order shall be issued subject to and in compliance with the terms of the trust deed of applicant made to the Mercantile Trust Company of San Francisco, as trustee, dated December 2, 1907, or the indenture of amendment and supplement mentioned in paragraph 1 hereof, which said indentures provide for the issuance of bonds payable forty years from date, bearing

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interest at the rate of 5 per cent per annum, payable semiannually on the first day of each succeeding June and December.

3. Northern Electric Railway Company is hereby authorized to issue bonds of the face value of $8,000,000, on the following express conditions precedent, and not otherwise, to wit:

(*a*) Said bonds may all be sold, but only so as to net applicant in cash not less than 80 per cent of the face value thereof plus accrued interest.

(*b*) Of the bonds so authorized, bonds of the face value of $2,500,000 may be exchanged in equivalent value or amount for applicant's bonds now outstanding as collateral, the latter thereupon to be canceled, or in lieu of such exchange said bonds may be sold for an amount in cash not less than that specified in (*a*), the cash realized therefrom shall be used to discharge existing indebtedness of applicant.

(*c*) Of the bonds so authorized the proceeds from the sale of the bonds of the face value of $5,500,000 and bearing numbers 5501 to 11000, inclusive, shall be used for the acquisition of property and the construction, completion, extension and improvement of facilities, namely, for the purpose of constructing a standard gauge electric railroad from the city of Sacramento to the city of Vallejo, with branch lines to the cities of Suisun and Vacaville, for the items specified in "Estimates of Cost of Constructing Main Line — Sacramento to Vallejo and Suisun and Vacaville Branches," filed with this Commission as part of the application.

4. Northern Electric Railway Company is hereby authorized to issue bonds of the face value of $225,000, on the following express conditions precedent, and not otherwise, to wit:

(*a*) Said bonds may be sold, but only so as to net applicant in cash not less than 85 per cent of the face value thereof plus accrued interest. Pending sale these bonds may be pledged at not less than 60 per cent.

(*b*) The proceeds of the sale or pledge of the bonds so authorized shall be used for the acquisition of property and the construction, completion, extension and improvement of facilities on the existing roads of applicant.

5. Such of applicant's bonds as it has heretofore issued for purposes other than sale, being bonds numbered 1 to 5275, inclusive, except bonds numbered 1 to 66, 110–3, 116–7, 140–2, 147–50, 176–7, 712, 1072–3, 1076, 1127, 1133–52, 1158–71, 2131–68, 2424–5, 2527, 2551–2, 2563, 2791–6, 3333, which bonds have been sold, and except such of said bonds as may be canceled under paragraph 3–*b* of this order, may continue to be issued by applicant as collateral for a period of one year from the date of this order without securing the further order of this Commission, in so far as affects the issue of such bonds, on condition that the

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indebtedness to be secured by the bonds shall not be less than 60 per cent of the face value of the bonds so to be issued.

6. Northern Electric Railway Company is hereby authorized to issue bonds of the face value of $2,604,000, which bonds are now pledged as collateral and are included within the numbers 1 to 5275, inclusive.

(*a*) Said bonds may be sold, but only so as to net applicant in cash not less than 85 per cent of the face value thereof plus accrued interest.

(*b*) The cash realized therefrom shall be used to discharge existing indebtedness of applicant.

7. Before any of said bonds may be issued, applicant shall present for the approval of the Commission a guarantee either by way of the personal obligation of E. R. Lilienthal, E. J. de Sabla, Jr., Louis Sloss, and W. P. Hammon, or by the creation of a million dollar fund of securities, that the interest on the outstanding bonds of applicant will be paid for a period of ten years from date of issuing said bonds. It may be provided that the guarantee may be released upon a showing that applicant has earned bond interest for a period of twelve consecutive months.

8. Before any of said bonds may be issued, applicant shall submit for the approval of this Commission the personal guarantee of E. R. Lilienthal, E. J. de Sabla, Jr., Louis Sloss, and W. P. Hammon, to the effect that applicant will invest in its plant at least $75,000 a year for a period of ten years next ensuing the commencement of operation of the extension mentioned in 3–*c*, or that applicant will retire an amount of bonds equal to $75,000 face value per year for said period.

9. The issue of such of applicant's bonds as have heretofore been issued for use as collateral subsequent to March 23, 1912, without authorization of this Commission is hereby validated in so far as affects the Public Utilities Act.

10. Northern Electric Railway Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month shall make a verified report to the Commission stating the sale or sales or other disposal of said bonds during the previous month, the terms and conditions of sale or other disposition, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

11. The authority hereby given shall apply only to bonds issued prior to November 1, 1913.

12. The effectiveness of this order is conditioned upon the prior payment to the Commission of the fee specified in section 57 of the Public Utilities Act.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of November, 1912.

DECISION No. 341.

IN THE MATTER OF THE APPLICATION OF THE SAN JOAQUIN LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS.

Application No. 278.

Decided November 26, 1912.

Applicant submitted a physical valuation of its properties, which showed a considerable margin between the outstanding bonded and other indebtedness, including the bonds herein asked to be issued and the value of its properties. Upon said valuation being checked, it appeared that, exclusive of certain doubtful items included therein, there was a sufficient margin between the obligations of the company and the valuation of its physical properties to warrant the granting of the application.

Held, The granting of the authority asked for is without declaration that the physical valuation presented by applicant shall be taken as the true value of its property.

W. A. Sutherland appearing for applicants.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by San Joaquin Light and Power Corporation for an order authorizing the issue of $925,000 face value forty-year 5 per cent first and refunding mortgage gold bonds Series "B," to be issued under the terms of a mortgage and deed of trust executed by applicant to The Trust Company of America, and dated the 1st day of August, 1910.

The financial condition of applicant is as follows:

Capital stock authorized:	
Preferred	$10,000,000 00
Common	15,000,000 00
Capital stock issued:	
Preferred	6,500,000 00
Common	11,000,000 00
Bonds of applicant:	
Authorized	25,000,000 00
Issued	3,331,000 00
Underlying bonds:	
Issued	3,157,000 00
Outstanding indebtedness on notes	971,590 08

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Applicant is engaged in the business of manufacturing and distributing electricity in the counties of Fresno, Kern, Kings, Madera, Merced, and Tulare, and applicant is also engaged in the business of manufacturing and distributing gas in the city of Selma in Fresno County, in the city of Merced, Merced County, in the city of Bakersfield, Kern County, and in addition applicant owns and operates the Bakersfield Electric Railway Company in the city of Bakersfield, Kern County.

The trust deed above mentioned, provides that before any of the bonds herein applied for may be issued, the net income of the corporation for the period of twelve months ending two months before the first day of the then current month must be at least twice the sum of the interest upon all outstanding bonds, including those requested to be issued.

It has been shown in this proceeding that applicant is entitled under this clause, to issue at this time $320,000 face value of bonds and it is alleged that within a period of not to exceed six months from this time, applicant will show an earning sufficient to entitle it to issue the balance of the $925,000 face value of bonds herein asked to be authorized.

Applicant has submitted a physical valuation of its properties which shows a considerable margin between the outstanding bonded and other indebtedness, including the bonds herein asked to be issued and the value of its properties. A checking of said physical valuation by the engineers and accountants of this Commission makes it appear that exclusive of certain doubtful items included in said physical valuation, there is a sufficient margin between the obligations of the company and the valuation of its physical properties to warrant the granting of this application.

The purposes for which the money to be realized from the sale of these bonds are to be put are the payment of obligations incurred by applicant for the purpose of investment in its plant. Hence it is proper that these obligations be capitalized.

Without declaring, therefore, that the physical valuation presented to this Commission by applicant shall be taken as the true value of its property, I recommend that the application be granted, on condition that at least 87 per cent of face value be obtained for said bonds.

The following form of order is herewith submitted.

ORDER.

Application having been made to the Railroad Commission of the State of California by San Joaquin Light and Power Corporation for an order authorizing the issue by said corporation of $925,000

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face value of its first and refunding mortgage gold bonds, Series "B," payable August 1, 1950,

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said corporation for the discharge of its obligations, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered that the Railroad Commission of the State of California does hereby authorize the issue by San Joaquin Light and Power Corporation of $925,000 face value of first and refunding mortgage gold bonds, in denominations of $1,000 each, bearing interest at the rate of 5 per cent per annum, payable semiannually on the 1st day of February and the 1st day of August in each year, and dated August 1, 1910, said bonds to be payable August 1, 1950.

Said bonds to be issued under and in pursuance of the terms of a mortgage or deed of trust dated August 1, 1910, executed by San Joaquin Light and Power Corporation to The Trust Company of America, a copy of which mortgage or deed of trust is on file with the application herein, upon the following conditions precedent, not otherwise:

1. Six hundred and five thousand dollars face value of the bonds herein authorized to be issued shall not be issued until applicant shall have submitted to the Commission satisfactory evidence that it has complied with the terms and conditions of the trust deed under which said bonds are to be issued, and specifically has complied with the provisions in said trust deed relating to the amount of income necessary to be earned by applicant before the issuance of bonds.

2. San Joaquin Light and Power Corporation shall sell the bonds hereby authorized so as to net said corporation not less than 87 per cent of the face value thereof plus accrued interest at the date of their delivery to the purchaser.

3. The proceeds from the sale of said bonds shall be used for the following purposes only.

(*a*) For the discharge of obligations, or so much thereof as the proceeds of the sale of said bonds will permit, said obligations being specified in paragraph IX of the application herein and totaling $971,590.08.

4. Said corporation shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month said corporation shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of said

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bonds during the preceding month, the terms or conditions of such sale or other disposition, the money realized therefrom and the use and application of such moneys.

5. The authority hereby given to issue such bonds shall apply only to bonds issued by said corporation on or before the 1st day of December, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of November, 1912.

DECISION NO. 341½.

IN THE MATTER OF THE ONE-WAY, ROUND-TRIP AND COMMUTATION FARES AND THE RULES AND REGULATIONS AFFECTING THE SAME OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY FOR THE TRANSPORTATION OF PASSENGERS BETWEEN ALL POINTS ON THE SOUTHERN DIVISION OF SAID NORTHWESTERN PACIFIC RAILROAD COMPANY IN CHARGING FOR THE TRANSPORTATION OF PASSENGERS, FARES LESS THAN THE FARES PROVIDED IN ITS PASSENGER FARE SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Case No. 333.

Decided November 27, 1912.

Ordering that the scope of the investigation in Case No. 333 be enlarged so as to include passenger fares of respondent between all points on its southern division, and also respondent's rules and regulations affecting such fares.

REPORT OF THE COMMISSION.

The Commission having on November 15, 1912, on its own initiative, instituted an investigation into the one-way fares of the Northwestern Pacific Railroad Company for the transportation of passengers between San Francisco and San Rafael, California, and intermediate points, and of the practice of the Northwestern Pacific Railroad Company in charging for the transportation of passengers, fares less than the fares provided in its passenger fare schedule on file with this Commission,

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which investigation has been assigned Case No. 333, and this Commission being of the opinion that the scope of this investigation should be enlarged so as to draw in question all the passenger fares of the Northwestern Pacific Railroad Company between all points on the southern division of said company, and also the rules and regulations affecting these passenger fares.

It is hereby ordered that this Commission, on its own initiative, under the provisions of section 60 of the Public Utilities Act, enlarge the scope of the investigation heretofore ordered by the Commission on its own initiative on November 15, 1912, so that the investigation shall cover all the matters entitled as above; and that the Secretary be and he hereby is instructed to notify said Northwestern Pacific Railroad Company to appear before this Commission on Saturday, December 14, 1912, at 10 o'clock a. m., in the office of the Commission, 833 Market street, San Francisco, California, before Commissioners Edgerton and Loveland, at which time and place said Northwestern Pacific Railroad Company may appear and be heard upon the matter entitled as above.

And be it further ordered that if said Northwestern Pacific Railroad Company does not appear at said time and place, it shall be deemed guilty of contempt of this Commission, and subject to the penalties prescribed by said Public Utilities Act.

Dated at San Francisco, California, this 27th day of November, 1912.

DECISION NO. 342.

IN THE MATTER OF THE APPLICATION OF VALLEJO AND NORTHERN RAILROAD COMPANY FOR AN ORDER DETERMINING WHETHER ITS BRANCH AND TRUNK LINE OF RAILROAD NOW COMPLETED BETWEEN BOYNTON AND ARMIJO AND FROM A POINT UPON ITS MAIN LINE NEAR THE TOWN OF FAIRFIELD TO FAIRFIELD JUNCTION, ALL IN SOLANO COUNTY, CALIFORNIA, YIELDS SUFFICIENT MAINTENANCE AND OPERATION.

Application No. 292.

Decided November 29, 1912.

REPORT OF THE COMMISSION.

Vallejo and Northern Railroad Company, a corporation, having on November 15, 1912, filed with the Commission an application for an order determining whether that portion of its main line now completed

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between Boynton and Armijo and that portion of its branch line now completed from a point upon its main line near the town of Fairfield to Fairfield Junction, a total distance of 5.51 miles, all of which completed railroad lies in Solano County, California, yields sufficient income to operate the same.

After an examination it has been found and determined that the total operating expenses of said 5.51 miles of railroad from October 24 to November 18, 1912, were $1,406.67, and the total earnings derived from operation during the said period were $17.40; and it further appearing that said earnings are not sufficient to operate said railroad and that the application should be granted, and it appearing that this is not a case in which a public hearing is necessary,

It is hereby ordered that after an examination of the account of earnings and operating expenses of the above described railroad of applicant, the Commission hereby finds that the operation of said railroad does not yield income sufficient to operate the same.

Dated at San Francisco, California, this 29th day of November, 1912.

DECISION No. 343.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC LIGHT AND POWER CORPORATION FOR PERMISSION TO PURCHASE THE ELECTRIC DISTRIBUTING SYSTEM OF THE EAGLE ROCK WATER COMPANY IN THE CITIES OF LOS ANGELES AND EAGLE ROCK AND TERRITORY ADJACENT THERETO IN LOS ANGELES COUNTY AND FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND THE APPLICATION OF THE EAGLE ROCK WATER COMPANY TO SELL ITS ELECTRIC DISTRIBUTING SYSTEM TO THE PACIFIC LIGHT AND POWER CORPORATION.

Application No. 285.

Decided November 29, 1912.

Application granted *ex parte* upon satisfactory showing that public convenience and necessity favor such determination.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this application permission is asked by the Pacific Light and Power Corporation to purchase and by the Eagle Rock Water Company, a

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corporation, to sell the electric distributing system of the Eagle Rock Water Company in the cities of Los Angeles and Eagle Rock and territory adjacent thereto in the county of Los Angeles, California, the application of the Pacific Light and Power Corporation also asking for a certificate under section 50(*a*) of the Public Utilities Act that public convenience and necessity require or will require the extension of the electric system of the Pacific Light and Power Corporation in said city of Eagle Rock.

The financial condition of the Pacific Light and Power Corporation and of the Eagle Rock Water Company is set forth in the pleadings.

The application further shows that the Pacific Light and Power Corporation has applied to the board of trustees of the city of Eagle Rock and has received a franchise to construct, maintain and operate an electric distributing system within said city; that the bids for such franchise were duly advertised and that said franchise was granted on the 21st day of October, 1912; that a certified copy of the notice of sale of said franchise is filed with this petition and that a certified copy of the ordinance granting said franchise will be filed as soon as such ordinance is adopted and approved.

The Pacific Light and Power Corporation promises that if permitted to purchase the electric distributing system of the Eagle Rock Water Company it will immediately reduce the price of electricity to the inhabitants of the territory served by said system, and that it will also make all service connections free of charge within said territory. It alleges that if permitted to purchase said system it will be enabled to furnish electric energy to such of the inhabitants of the city of Eagle Rock as cannot now obtain that utility. The Eagle Rock Water Company joins in the application for the transfer of its electric distributing system to the Pacific Light and Power Corporation, and alleges that the financial condition of the Pacific Light and Power Corporation is such as to enable it to give a better service to the residents of the territory comprehended in the application than the Eagle Rock Water Company can give.

An analysis of the financial statements of the applicants shows that the Pacific Light and Power Corporation is in a better condition and position, or will be if this application is granted, to serve the public than the Eagle Rock Water Company is.

The Commission communicated with the board of trustees of the city of Eagle Rock and received assurances from said board that neither the board of trustees nor any resident of the city of Eagle Rock objected to the transfer but that all were in favor of it. Under these circumstances, the Commission decided that a hearing was unnecessary and that the application could be passed upon *ex parte*. We find that

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public convenience and necessity require and will require that the application be granted and the following order will be issued:

ORDER.

Whereas, the Pacific Light and Power Corporation has applied for permission to purchase the electric distributing system of the Eagle Rock Water Company in the cities of Los Angeles and Eagle Rock and territory adjacent thereto in the county of Los Angeles, and the Eagle Rock Water Company has applied for permission to sell said system to the Pacific Light and Power Corporation, which corporation has promised, if the application is granted:

First—To reduce the price of electricity to present users.

Second—To extend the system in Eagle Rock for which it has received a franchise from the city of Eagle Rock.

Third—To make all service connections free of charge; and it appearing that neither the board of trustees of the city of Eagle Rock nor any resident thereof or of the territory included in the application objected to the transfer but that all were in favor of it, and the Commission finding that public convenience and necessity require or will require the granting of permission to the Pacific Light and Power Corporation to purchase the electric distributing system of the Eagle Rock Water Company, and to extend said system as per franchise granted by the said city of Eagle Rock, and to exercise the rights granted by said franchise; now, therefore,

Be it ordered that upon conditions named in the application and above set forth in this opinion and order, namely, that the Pacific Light and Power Corporation will reduce the price of electricity to present users, extend the system as per franchise granted by the board of trustees of Eagle Rock, install all service connections free of charge, the Pacific Light and Power Corporation be and it is hereby granted permission to purchase from the Eagle Rock Water Company the electric distributing system of said company in the cities of Eagle Rock, Los Angeles, and territory adjacent thereto in Los Angeles County, California, for the sum of twenty-two thousand five hundred (22,500) dollars, and the Eagle Rock Water Company be and it is hereby granted permission to sell said electric distributing system to the Pacific Light and Power Corporation for said sum of twenty-two thousand five hundred (22,500) dollars, it being a further condition of this order that the Railroad Commission of the State of California or any rate-fixing body shall not be required to accept this price of twenty-two thousand five hundred (22,500) dollars as the reasonable price of the property for rate-fixing purposes.

Be it further ordered that applicant be and it is hereby granted

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permission to exercise rights conferred by the franchise granted by the city of Eagle Rock as herein set forth. This order not to become effective until applicant shall have filed with this Commission a certified copy of the ordinance granting said franchise, showing that it has been adopted and approved by the board of trustees of the city of Eagle Rock.

The above opinion and order are hereby approved and ordered filed as the *ex parte* order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of November, 1912.

DECISION NO. 344.

IN THE MATTER OF THE APPLICATION OF BOARD OF TRUSTEES, CITY OF McKITTRICK, KERN COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A PUBLIC HIGHWAY AT GRADE ACROSS THE TRACKS OF THE SOUTHERN PACIFIC COMPANY, IN THE CITY OF McKITTRICK, KERN COUNTY, CALIFORNIA.

Application No. 302.

Decided November 29, 1912.

REPORT OF THE COMMISSION.

Board of trustees of the city of McKittrick, Kern County, California, having on November 23, 1912, filed with the Commission its application for permission to construct Second street at a grade across the tracks of the Southern Pacific Company in said city of McKittrick, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the Southern Pacific Company has executed an easement, of date October 25, 1912, authorizing the extension of said Second street across its tracks; and it further appearing that it is not reasonable nor practical to avoid grade crossings of said street with said tracks, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted board of trustees of the city of McKittrick, Kern County, California, to extend Second street of said city at grade across the tracks of the Southern Pacific Company between "E" street and "F" street of said city as

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shown by the map attached to the application, subject to the following conditions:

(1) The entire expense of constructing the crossings shall be borne by the applicant. Applicant shall hereafter maintain the approaches to said crossings on each side of the tracks of the Southern Pacific Company up to and within two (2) feet of the rails thereof.

(2) The expense of hereafter maintaining said crossings over said tracks and to a distance of two (2) feet on each side of the rails thereof shall be borne by the Southern Pacific Company.

(3) Said crossings shall be made of a length not less than forty-eight (48) feet, with grades of approach not exceeding eight (8) per cent, and ballasted with not less than six (6) inches of first-class stone or gravel ballast, and otherwise prepared and made safe for the easy and convenient passage of vehicles and other road traffic.

(4) The Commission reserves the right hereafter to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, public convenience and necessity demand.

Dated at San Francisco, California, this 29th day of November, 1912.

DECISION NO. 345.

IN THE MATTER OF THE APPLICATION OF BOARD OF TRUSTEES CITY OF TURLOCK, STANISLAUS COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT A PUBLIC HIGHWAY AT GRADE ACROSS THE TRACK OF SOUTHERN PACIFIC COMPANY, ON JULIAN STREET, CITY OF TURLOCK, STANISLAUS COUNTY, CALIFORNIA.

Application No. 290.

Decided November 29, 1912.

REPORT OF THE COMMISSION.

Board of trustees, Stanislaus County, California, having on November 13, 1912, filed with the Commission an application for permission to construct a public highway at grade across the track of Southern Pacific Company, same being an extension of Julian street, city of Turlock, Stanislaus County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary,

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that Southern Pacific Company has entered into an agreement dated November 18, 1912, with applicant, a copy of which is now filed in connection with the application, granting the right to applicant to open said public highway known as Julian street across its track in said city, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said track and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted board of trustees, city of Turlock, Stanislaus County, California, to construct a public highway known as Julian street across the track of Southern Pacific Company, between First street and Modesto road at engineer's station 1720+85, as shown by the map attached to the application, subject to the following conditions:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter, up to within two (2) feet on each side of the rails of Southern Pacific Company shall be borne by applicant.

(2) Said company shall hereafter maintain said crossing across its track and to a distance of two (2) feet on each side thereof in good and first-class condition for the safe and convenient use of the public.

(3) Said crossing shall be constructed of a width not less than thirty-six (36) feet with grades of approach not exceeding eight (8) per cent, and shall be ballasted with gravel or stone ballast to a depth of not less than six (6) inches.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of November, 1912.

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DECISION No. 346.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS, PLACER COUNTY, CALIFORNIA, AND SOUTHERN PACIFIC COMPANY FOR PERMISSION TO SEPARATE GRADES AT A PUBLIC HIGHWAY CROSSING BETWEEN MAGRA AND GOLD RUN, PLACER COUNTY, CALIFORNIA.

Application No. 294.

Decided November 29, 1912.

REPORT OF THE COMMISSION.

Board of supervisors of Placer County, California, and Southern Pacific Company, a corporation, having on November 19, 1912, filed with the Commission a joint application for permission to separate grades at a public highway crossing with the tracks of said company between Magra and Gold Run, Placer County, California; and it appearing to this Commission that this is not a case in which a public hearing is necessary, that applicants have agreed as to the character and mode of abolishing a grade crossing which now exists of a public highway with the tracks of said company, and in lieu thereof to construct an undergrade crossing thereby eliminating said grade crossing, and it further appearing that the elimination of said grade crossing is very desirable and that the application should be granted,

It is hereby ordered that permission be hereby granted board of supervisors of Placer County, California, and Southern Pacific Company, to separate grades for a public highway now crossing the tracks of said company at a point between Magra and Gold Run, Placer County, California, in the southwest quarter of section eight (8), township fifteen (15) north, range ten (10) east, M. D. M., and at engineer's station 3333+93 of said company, as shown by the maps attached to the application, provided that the crossing shall hereafter be maintained by applicants in good and first-class condition for the safe and convenient use of the public, and further provided that said undergrade crossing shall be completed in accordance with the plans and specifications attached to the application.

It is further ordered that the Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of November, 1912.

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DECISION NO. 347.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS LOS ANGELES COUNTY, STATE OF CALIFORNIA, FOR PERMISSION TO CONSTRUCT A PUBLIC HIGHWAY AT GRADE OVER THE TRACKS OF SOUTHERN PACIFIC COMPANY ON SMITH AVENUE BETWEEN FULTON WELLS AND LOS NIETOS, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 295.

Decided November 29, 1912.

REPORT OF THE COMMISSION.

Board of supervisors, Los Angeles County, State of California, having on November 20, 1912, filed with this Commission an application for permission to construct a public highway at grade over the tracks of Southern Pacific Company on Smith avenue, between Fulton Wells and Los Nietos, Los Angeles County, California, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the consent of Southern Pacific Company for the construction of the crossing, as shown by copy of agreement submitted of date, October 21, 1912, and it further appearing that it is not reasonable nor practicable to avoid grade crossings, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted board of supervisors, Los Angeles County, California, to extend Smith avenue, a public highway, across the tracks of Southern Pacific Company, between Fulton Wells and Los Nietos, and at engineer's station 131+32, as shown by the map attached to the application, subject to the following conditions:

(1) The entire expense of constructing the crossings and their maintenance hereafter to within two (2) feet on each side of the rails of Southern Pacific Company shall be borne by applicant.

(2) Southern Pacific Company shall at its own expense hereafter maintain the crossings across its tracks and to a distance of not less than two (2) feet outside of its rails, in a good and first-class condition for the safe and convenient use of the public.

(3) Said crossings shall be constructed of a width not less than twenty-four (24) feet and with grades of approach not exceeding eight (8) per cent and shall be ballasted with first-class stone or gravel ballast to a depth of not less than six (6) inches.

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(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 29th day of November, 1912.

DECISION NO. 348.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ON FIFTEENTH STREET NEAR "H" STREET IN THE CITY OF BAKERSFIELD, KERN COUNTY, CALIFORNIA.

Application No. 305.

Decided December 3, 1912.

REPORT OF THE COMMISSION.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having on November 29, 1912, filed with the Commission its application for permission to construct a spur track at grade on Fifteenth street near "H" street, city of Bakersfield, Kern County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that the necessary permit or franchise has been secured for the construction of said spur track from the board of trustees of said city of Bakersfield, and it further appearing that it is not reasonable nor practicable to avoid constructing said spur track at grade, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted the Atchison, Topeka and Santa Fe Railway Company to construct said spur track at grade on Fifteenth street between "H" and "I" streets, and on the north side of the main line of said company, to serve the plant of B. L. Brundage, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing and hereafter maintaining the said spur track on Fifteenth street shall be borne by applicant.

(2) Said spur track shall be constructed in accordance with plans

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approved by the board of trustees of said city of Bakersfield, and subject to the terms and conditions specified in the permit authorizing the construction of same.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said spur track as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 3d day of December, 1912.

DECISION NO. 349.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY FOR PERMISSION TO CONSTRUCT SUBGRADE CROSSINGS UNDER THE TRACKS OF SOUTHERN PACIFIC COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY NEAR McAVOY, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 296.

Decided December 3, 1912.

REPORT OF THE COMMISSION.

Oakland, Antioch and Eastern Railway, a corporation, having on November 20, 1912, filed with the Commission an application for an order permitting the construction of subgrade crossings for its main line under the tracks of Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, near McAvoy, Contra Costa County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, have agreed to the construction of said crossings in accordance with plans and specifications attached to the application and the division of the cost of installation thereof; and it further appearing that it is reasonable and practicable to avoid grade crossings of applicant's proposed railroad with the railroads of said companies, and that the application should be granted subject to the conditions hereinafter specified,

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It is hereby ordered that permission be hereby granted Oakland, Antioch and Eastern Railway to construct its railroad below grade at crossings proposed with the tracks of the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, near McAvoy, Contra Costa County, California, in accordance with the plans and specifications attached to the application and subject to the following conditions, viz:

(1) The overhead clearance above the top of rails of applicant and the bottom of overhead structures under the tracks of the other railroads party to the crossings, and the side clearances for the subgrade structure, shall be in accordance with the plans attached to the application.

(2) The cost of constructing the subgrade crossings shall be borne one half (½) by applicant, one quarter (¼) by The Atchison, Topeka and Santa Fe Railway Company and one quarter (¼) by Southern Pacific Company. The cost of maintaining the crossings, including the overhead structures, shall be borne in proportion or in accordance with such agreement or contract as may hereafter be entered into between the parties.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 3d day of December, 1912.

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DECISION NO. 350.

IN THE MATTER OF THE APPLICATION OF THE COALINGA WATER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE EXPENDITURE OF FUNDS PROCURED FROM THE SALE OF BONDS.

Application No. 298.

Decided December 3, 1912.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The Coalinga Water and Electric Company having on November 29, 1912, made written request to this Commission that the application filed in the above entitled proceeding be dismissed, it is hereby ordered that the same be and the same hereby is dismissed.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of December, 1912.

DECISION NO. 351.

EMMA J. TYLER
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 291.

Decided December 3, 1912.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled action having on November 29, 1912, made written request to this Commission that the complaint heretofore filed in the above entitled action be dismissed, it is hereby ordered that the same be and the same hereby is dismissed, without prejudice.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of December, 1912.

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DECISION No. 352.

IN THE MATTER OF THE APPLICATION OF OJAI POWER COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF FRANCHISE RIGHTS, AND FOR PERMISSION TO ISSUE STOCK TO THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS.

Application No. 276.

Decided December 3, 1912.

Merle J. Rogers, for applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The Ojai Power Company applies to this Commission, first, for a certificate declaring that public convenience and necessity require the exercise by applicant of certain rights granted to it by Ordinance No. 172 of the board of supervisors of Ventura County, California, by which ordinance applicant is given the right to construct and install an electric light distributing system on and along certain streets and roads within the town of Nordhoff and surrounding territory within the county of Ventura, and secondly, for an order of this Commission authorizing applicant to issue its capital stock at par to the amount of $25,000, for the purpose of constructing a small system to supply electric energy for light to the residents of Nordhoff and the Ojai Valley.

The Ojai Power Company was incorporated in July, 1912, with an authorized capital stock of $50,000, divided into 500 shares of the par value of $100 each. The company was formed by residents of Nordhoff who are desirous of procuring the means of supplying electric light to themselves and others in that community. Nordhoff is an unincorporated town fifteen miles from Ventura and is situated in the very prosperous and productive Ojai Valley. There are now upward of 1,200 people living in the Ojai Valley and there is at present no electric light system to supply these people. The public convenience and necessity for such a lighting system is in this case so obvious that I have no hesitancy in recommending that the certificate which is applied for be granted.

The Ojai Power Company also requests the authority of this Commission to issue 250 shares of its stock of the par value of

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$25,000. Applicant states that it desires and is prepared to issue this stock at par.

The Ojai Power Company was formed by residents of Nordhoff and vicinity to meet their own needs and the needs of the community. It is contemplated and applicant expects to dispose of this stock to persons residing in this community and who are prepared to take the stock at its par value. The proceeds from the sale of the stock are to be used by applicant in acquiring and constructing an electric light distributing system. None of applicant's stock has as yet been issued.

Applicant has estimated that the immediate needs of the company in constructing this plant amount to $15,000 and applicant has submitted a detailed statement of estimates which total this amount. The additional $10,000 is to be used by applicant to pay for extensions in its system, which it has every reason to believe will be necessary as soon as the company has begun to operate. The estimates which applicant has submitted appear to me to be reasonable and necessary for the purposes intended and I recommend that applicant be permitted to issue its capital stock to the amount of $25,000, as requested. I submit herewith the following form of order:

ORDER.

The Ojai Power Company having applied to this Commission first, for a certificate declaring that public convenience and necessity require the exercise of certain franchise rights granted to it by Ordinance No. 172 of the board of supervisors of Ventura County, California, and secondly, applicant having applied for an order of this Commission authorizing applicant to issue its capital stock to the par value of $25,000, and a public hearing having been held upon this application,

It is hereby declared that public convenience and necessity require the exercise by the Ojai Power Company of the rights granted to it by Ordinance No. 172 of the board of supervisors of the county of Ventura, State of California, passed and adopted October 7, 1912, by which ordinance the Ojai Power Company is given the right to construct an electric light distributing system on and along certain streets in the unincorporated town of Nordhoff and surrounding territory in the county of Ventura, and

It is hereby ordered that the Ojai Power Company be and the same hereby is authorized to issue 250 shares of its capital stock of the par value of $25,000, upon the following conditions and not otherwise, to wit:

1. Said stock shall be issued so as to net applicant the par value thereof.

2. The proceeds obtained from the sale of this stock shall be used by applicant in the acquisition and construction of an electric light

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distributing system to supply light to the residents of Nordhoff and vicinity, in accordance with the plan outlined in the application.

3. The Ojai Power Company shall keep true and accurate accounts showing the receipt and application in detail of the proceeds from the sale of the stock herein authorized to be issued, and on or before the twenty-fifth day of every month the company shall make a verified report to the Commission stating the amount of such stock sold during the preceding month, the terms and conditions of such sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable is made a part of this order.

4. The authority hereby given to issue stock shall apply only to stock issued by applicant on or before December 1, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of December, 1912.

DECISION NO. 353.

E. F. JORDAN

vs.

OCEAN SHORE RAILROAD COMPANY.

Case No. 330.

Decided December 3, 1912.

Complaint alleges that a proposed discontinuance by respondent of the operation of one of its passenger trains during the winter season is without reason, and would seriously inconvenience the traveling public. It has been the practice of respondent to discontinue one train during each winter season.

Held, That respondent, except during the summer months when excursions are run, operates its passenger service at a loss, and that until its road is put in shape and operates in a manner which will attract homeseekers it will continue to operate such trains, excepting during the summer months, at a decided loss; that respondent is not in a financial position to stand the drain from such loss. Complaint dismissed.

H. H. McClosky and *F. V. Meyers*, for complainant.

Page, McCutchen, Knight & Olney and *A. C. Greene*, for defendant.

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REPORT OF THE COMMISSION.

LOVELAND, GORDON and EDGERTON, *Commissioners.*

In this action the complainant prays for an order of the Commission directing the defendant to continue in service two morning trains arriving in San Francisco at about the hours of 7.30 a. m. and 8.40 a. m. The complaint is the result of an announcement on the part of the defendant that it proposes during the winter months to discontinue the train arriving at 8.40 a. m., it being the practice of the defendant to take off one train during the winter season. The complainant alleges that if this train is withdrawn from service, it will be impossible for a large number of people to live at their present homes along the line of the defendant and do business in the city and county of San Francisco, and further, that no good reason exists for such train not being operated by the defendant carrier.

The defendant, in its answer, denies that the withdrawal of the train arriving in San Francisco at present at 8.40 a. m. would work any great hardship on the people now living along its line and that the train now arriving at 7.30 a. m., which it is proposed to continue in service, is ample to reasonably accommodate all persons desiring to travel during the winter months. The defendant sets up in its answer the fact that during the period from November 6, 1911, to April 20, 1912, but one passenger train was run each morning from Half Moon Bay to San Francisco and that the average number of passengers who traveled on this train on each week day was 39.87 and that of this number 15.42 were so-called commuters.

We will not at this time discuss the defendant's answer with reference to the earning capacity of its early morning passenger trains. At the hearing, the complainant introduced evidence to prove that the withdrawal of the train arriving at 8.40 a. m. would cause great inconvenience to the traveling public, particularly, the commuters whose business in San Francisco was such that made it very convenient to use this train. Testimony was given to the effect that the territory tributary to the line of the Ocean Shore Railroad was being retarded in development because of the inadequate train service, and that the withdrawal of this train would result in compelling the few people now residing along the line to abandon their homes. Testimony offered by the defendant was not controverted and was to the effect that during the month of October, 1911, during which period two morning trains were operated, a total of 1686 passengers was carried, or an average per day of 54.4. During the month of October, 1912, the same trains carried 1681 passengers, or an average of 54.2 passengers per day. These figures indicate to the Commission that the business of the two years is on an equal footing.

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From the evidence introduced by the defendant, it appears that the total earnings from passengers carried on the two morning trains during the month of October, 1911, amounted to $637.69, or an average of $20.56 per day. During the month of October, 1912, the same trains earned $544.56, or an average of $17.55 per day. During the period November 1, 1911, to April 30, 1912, during which time but one train was operated, the passenger receipts amounted to $2,629.22, or an average of $14.45 per day. This would indicate that during the winter months when but one train was operated the passenger receipts average $3.10 per day less than the receipts of the two trains for the balance of the year.

In other words, the operation of these two trains during the period—April 30th to November 1st—resulted in an increase in revenue to the railroad of $3.10 per day over what was received from the operation of one train during the winter months.

During the period—November 6, 1911, to April 20, 1912—the average number of passengers carried on the one train which was operated at this time was 39.87. An investigation of the records of the Ocean Shore Railroad indicates that from November 1st to November 26th, 1912, inclusive, Train No. 2 averaged 17.3 passengers per day and Train No. 4 averaged 30.6 passengers per day. This indicates that approximately 48 passengers per day patronized the two morning trains during the best part of November of this year and in comparison with the travel from November 6, 1911, to April 20, 1912, during which time the average travel was 39.87 passengers per day on one train, it would appear that in the month of November of this year, the average travel on two trains was approximately eight passengers more than patronized one train during the winter months of 1911-12.

From the testimony it appears that the average number of commuters carried on the two trains during the month of October, 1911, amounted to 24.2 per day, and that during November, 1912, the average number of commuters carried on both trains on week days amounted to 24.3 per day. During the period—November, 1911, to April, 1912—the average number of commuters carried was 15.42 per day on the one train operated.

From these figures it would seem that during the winter months, 1911-12, when one train was operated, the defendant carried approximately nine less commuters per day than it did on two trains during the month of October, 1911. From the record of travel on these two trains, it would appear that if the Ocean Shore Railroad is permitted to discontinue the operation of one train, it will carry approximately nine less commuters per day, provided, of course, the history of the year before is repeated and the same decrease in commutation travel occurs this year as last. The question, then, to

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consider is whether the defendant should be required to run an extra train primarily to carry nine passengers riding on commutation tickets, the maximum receipts from the sale of which tickets will not exceed sixty (60) dollars per month.

We believe the records clearly show that the Ocean Shore Railroad, except during the summer months when excursions are run, operates its passenger service at a loss. And we believe that until this road is put in shape and operates in a manner which will attract homeseekers that it will continue to operate its passenger trains, except during the summer months, at a decided loss.

Considerable time was taken up at the hearing examining witnesses with reference to the cost per day of operating the train which the complainant desires should be kept in service. Witness for the defendant testified that it would cost approximately $84 per day and included in this cost is a proportion of overhead and maintenance expense. It was admitted, however, that no additional overhead expense or maintenance of track, roadway and such like items would be incurred by the running of this particular train and for the purposes of this case, we will assume that the actual cost of running this train will be $40 per day, or approximately $1,200 per month, which figure is arrived at after a very careful investigation. From the record of travel during the time two trains were operated in 1911 as against one during the winter months of 1911–12, and also considering the travel of this date, we are of the opinion that at best the increased revenue which the Ocean Shore Railroad will derive from the operation of two trains during the winter months will amount to $100 per month. We then come to the question of whether or not in justice to the defendant, we must ask it to expend $1,200 in order to receive $100 in revenue.

Railroads under normal conditions never handle, nor do they expect to handle, as many passengers during the winter months as during the summer season and as a rule the winter service is more restricted than that of summer. It has not, however, been the practice of well established railroads to restrict their winter commutation service except in cases where such commutation trains run between summer resorts and large cities, which summer resorts are closed during the winter period.

From our investigation, it appears that in the years 1909, 1910 and 1911, the Ocean Shore Railroad was invariably operated at a heavy loss during the winter months. This deficit during the winter months of these years runs from $7,000 to $16,000 per month. In fact, the road appears to have been operated at a loss in all but three months of 1909; two months of 1910; four months of 1911. In the year 1912, however, the road appears to have been more fortunate than in previous years and has paid something over operating expenses in all but three months to date.

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It is a matter well known to the Commission that the Ocean Shore Railroad has been seriously handicapped by reason of its inability to raise money to make many needed improvements to its line. Its service has been frequently interrupted during the winter period for many days at a time due to slides at points where the line skirts the bluffs above the ocean. The condition of the motive power and rolling stock is far from the best which accounts for the heavy maintenance of equipment expense. The conditions surrounding the maintenance of this property are very different from those of large lines. The expense of operating an additional train 60 miles a day by a large line would be of very little consequence.

In disposing of this controversy, we must, therefore, consider all of the conditions under which the defendant's line is operated, including the necessity for raising money to put the road in safe condition to operate and to provide additional equipment.

The complainant urges that the road is in a good, healthy financial condition. In this, we can not agree. The road has little, or no, working capital and under conditions which ordinarily prevail during the rainy season, heavy expenditures will be required to keep the road open at all.

In order to ascertain the facts concerning the financial condition of the road and the obligations which would have to be met during the next few months, the Commission made some investigations and finds that there is approximately $22,000 cash on hand from the operation of the road. There is approximately $56,000 in the hands of various parties, namely the former receiver of the road and the Mercantile Trust Company. This money, however, is not available at the present time and a considerable length of time may elapse before it is. In the mean time, in order to keep the road running so that there may be no delay in operating trains from the terminus at Twelfth and Mission streets, San Francisco to Tunitas Glen, we find the following sums of money must be obtained for the several purposes below mentioned:

Steam shovel	$7,100 00
Paving streets ordered by the San Francisco Supervisors	12,000 00
Two steel bridges to replace wooden bridges in San Francisco ordered by the Supervisors of San Francisco	18,000 00
Taxes—Second Installment	5,400 00
Purchase of five pieces of right of way in San Francisco	60,620 00
Working capital to pay operating expenses during the winter months which months have always shown a deficit	30,000 00
Total	$133,120 00

To meet these expenditures the defendant has on hand $22,000 with the possibility of securing $56,000 additional. It is absolutely necessary, in order that this property may be operated continuously that a steam shovel be provided to take care of slides, if any occur, during the winter

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months. Street paving is now being done and must be paid for. The rights of way to be acquired cover land over which the railroad is now operating without any title, or right, and unless purchased, the defendant is in a position where the owner of the property could remove rails from his property, thereby preventing any through service whatever.

From the records of previous years it is apparent to us that $30,000 working capital is hardly sufficient to carry the road through an ordinary winter.

Because of the various suits now pending against the present company by former bondholders, it is impossible at this time to borrow money to make much-needed improvements and meet current obligations and until these suits are disposed of, it is of the utmost importance, not only to the owners of the property, but to all who patronize the road, either by traveling or shipping freight, that no obstacles be placed in the way of the management for keeping the road open for at least some kind of service.

We state frankly that we believe if the Ocean Shore Railroad were in a financial condition to stand the drain, it would be good business to keep the two trains in operation during the winter months. Because, in our opinion, it would have a tendency to establish confidence in the project and with this confidence would come a healthy gain in population along the line. We believe, however, that this is an inopportune time for complainant to insist on this road's maintaining a two-train service at an expense of $1,200 per month, which will not, in our opinion, increase the revenue of the road over $100 per month. If the road at this time were not beset with law suits and had ample equipment in good repair and were not facing large expenditures to purchase rights of way which are already mortgaged, in other words, if this road were in a sound financial condition, we would not be inclined to permit this train to be taken off. Under all the circumstances in the case, which have received our most careful consideration, we are of the opinion that it would be unreasonable at this time to require the defendant to continue two passenger trains in service and we will, accordingly, permit the withdrawal of one morning passenger train from service after December 15, 1912.

The Commission will expect the two-train service to be resumed March 15, 1913, unless conditions make it practically impossible to do so. We desire at this time to notify the Ocean Shore Railroad that the Commission expects it to improve its roadbed and provide proper equipment before November, 1913.

There is no question in our minds but that a modern service will prove of great benefit to the Ocean Shore Railroad. There are many very attractive places on this line for suburban homes and resorts and the owners of the railroad should find some way of removing the obstacles which prevent the raising of capital to provide the much needed im-

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provements. In this way only can the owners of the road fulfill their obligations to the public to provide modern and safe service.

Thousands of people have purchased property along this line with the intention of building homes. Real estate operators were promised an elaborate electric service by the original promoters of the road and the original promoters of the line themselves sold a very large amount of property to homeseekers on such promise.

Material for construction and operation of an electric railway, including cars and power house equipment, was ordered and structural steel for the building having been received, was advertised extensively as a means of inducing innocent persons to purchase property along the line, notwithstanding the affairs of the road were in a critical condition at the time.

It may be true that the present owners of the road did not make the promises to persons purchasing the property, nevertheless, many of the present holders of securities held bonds or stock in the original company and must have been aware of the representations made to investors to induce them to purchase property.

The Commission proposes to use all the power it possesses to see that the territory served by the Ocean Shore Railroad is provided with adequate transportation facilities and that thousands of propery owners who want to become patrons of the line are not denied the privilege.

While we are permitting one morning train to be withdrawn for the reason that our investigation develops the fact that the road can ill afford at this time to stand any financial loss whatever, we most strongly urge that the parties interested in the ownership of the line get together on some common ground, and provide the means for rehabilitating the property in order that the road may be brought up to its maximum earning capacity and the public furnished the service to which it is entitled.

Since this case was submitted, the Commission has been in receipt of protests signed by several hundred citizens residing along the line of the Ocean Shore Railroad and these protests have received our earnest consideration. In permitting this train to be withdrawn, we have considered the case from every possible angle and believe that, in view of the financial condition of the property, harassed as it is by lawsuits among the contending factions claiming an interest in the ownership of the road that the best interests of the public lie in keeping the road in operation for the present with at least some knd of service. Rather than burden the road at this time with the additional expense incident to the operation of two trains, we feel that the public interests require that every precaution be taken to keep the road open during the winter.

It must be borne in mind particularly by applicant and by those who have supported the application by petition that their request is not for a continuation of such service as has been given in the past, but rather

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for an additional service over the winter schedules, which have been in effect since the operation of the road began.

We recommend that the complaint be dismissed and submit the following form of order:

ORDER.

A complaint having been filed in the above entitled case and a hearing having been duly held therein and good reasons appearing therefor as set forth in the foregoing opinion,

It is hereby ordered that the complaint be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 3d day of December, 1912.

DECISION NO. 354.

IN THE MATTER OF THE APPLICATION OF FRESNO CITY WATER COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF FIFTY THOUSAND DOLLARS OF BONDS.

Application No. 297.

Decided November 4, 1912.

Applicant permitted to issue $50,000 bonds and to use the proceeds, in amounts specified, for (a) the discharge of obligations; (b) the reimbursement of moneys expended from income; and (c) for extensions to distribution system.

Sutherland & Barbour, for Fresno City Water Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Fresno City Water Company asks for an order of this Commission authorizing it to issue its first mortgage five per cent forty year bonds in the sum of $50,000, for the purpose of paying existing obligations, reimbursing the company for money expended from income upon new construction, and making extensions of its system.

Applicant was organized in 1905 by taking over the properties of Fresno Water Company, which had gone into receivership. It is engaged in the business of distributing and selling water to the inhabitants of the city of Fresno. Applicant's stock, consisting of 3,500 shares of the par value of $100 each and applicant's bonds to the amount of $248,000, were issued for the purpose of taking over the properties of

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Fresno Water Company. Since then there has been no additional issue of either stocks or bonds. Applicant has retired $23,000 in bonds by purchase for the sinking fund, leaving bonds outstanding in the sum of $225,000.

Applicant has raised $35,000 from an assessment upon its stock and has invested the money in its property. No dividends have been paid upon the stock.

For the year ending December 31, 1911, applicant earned a net surplus of $11,021.82. A statement submitted for the first nine months of 1912 shows a surplus of $13,209.03, without deducting certain annual adjustments.

Applicant presents a plant valuation of $447,066.03 as of November 30, 1911, and, with additions since made, submits an estimate of value of $467,551.66.

Applicant submits a statement of floating indebtedness in the sum of $30,490.92. It asks for authority to issue bonds to pay obligations as follows:

Union National Bank of Fresno	$10,000 00
Mark Lally Co.	1,801 30
San Joaquin Light and Power Corporation	9,791 63
Sundry items as listed in application	1,167 21
Total	$22,760 59

Applicant asks for authority to issue bonds to reimburse it for capital expenditure in the amount of $2,665.85 and to use the proceeds for the purposes of its pay roll. Applicant submits that it has expended large sums from income for additions to its property within the past five years.

Applicant asks for authority also to issue bonds in the sum of $25,000, and to use the proceeds for such extensions to its system as may be required during the next year in the ordinary course of its business. These additions comprise the small extensions that efficient service requires. Applicant states that they cannot be set forth in detail in advance.

The bonds hereby applied for are to be issued under applicant's first mortgage dated May 21, 1906.

I recommend that the application be granted, and submit herewith the following form of order:

ORDER.

Fresno City Water Company having applied to the Railroad Commission for an order authorizing an issue by said company of bonds of the amount of $50,000 face value, payable on the first day of January, 1946, under the terms and conditions set out in its mortgage to Mercantile Trust Company of San Francisco, dated May 21, 1906, a copy of which

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is duly on file with this Commission and to which reference is hereby made, said bonds to bear interest at the rate of five per cent per annum; and a hearing having been held, and it appearing that the money to be procured from the sale of said bonds is necessary to and reasonably required by Fresno City Water Company for the payment of obligations incurred in the extension of its facilities; for the reimbursement for money expended from income for the construction, extension and improvement of its facilities within the past five years; and for the construction, extension and improvement of its facilities during the next year; and it further appearing that said purposes are not in whole or in part reasonably chargeable to operating expenses or income:

It is hereby ordered that Fresno City Water Company, the applicant herein, be and is hereby authorized to issue $50,000 face value of principal of said bonds, payable on the first day of January, 1946, under the terms and conditions set out in its mortgage to Mercantile Trust Company of San Francisco, dated May 21, 1906, said bonds to bear interest at the rate of five per cent per annum, on the following conditions and not otherwise.

(1) Fresno City Water Company is hereby authorized to sell said bonds in accordance with the terms of its mortgage and deed of trust above referred to, but it shall receive not less than 85 per cent of their face value and accrued interest thereon, after the payment of all brokerage and commissions upon the sale of said bonds.

(2) The proceeds from the sale of said bonds shall be used for the following purposes:

(*a*) The payment of the following obligations incurred in the extension of its facilities:

Union National Bank of Fresno	$10,000 00
Mark Lally Company	1,801 30
San Joaquin Light and Power Corporation	9,791 63
Sundry items as listed in application	1,167 21
Total	$22,760 59

(*b*) The reimbursement of applicant for money expended from income within the past five years next preceding the application herein in the sum of $2,665.85.

(*c*) For extensions to applicant's distributing system as required in the ordinary course of development of its business $25,000.00.

(3) The proceeds from the sale of said bonds shall be devoted only to such uses as those for which the issue of bonds is permitted under the Public Utilities Act.

(4) Fresno City Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on

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or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(5) The authority hereby given to issue such bonds shall apply only to bonds issued by Fresno City Water Company on or before the 30th day of November, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of November, 1912.

DECISION No. 355. Not used.

DECISION No. 356.

IN THE MATTER OF THE APPLICATION OF THE HAWTHORNE ELECTRIC AND WATER COMPANY FOR THE ESTABLISHING OF RATES.

Application No. 5.

Decided December 6, 1912.

Applicants confess in their application that to fix rates which would return a reasonable amount on what they claim to be their investment would result in a prohibitive rate such as the present consumer could not afford to pay because of the fact that the consumers are small in number compared to the ability of the plant to furnish water.

Metered basis of rate schedules as against flat rate system of charging discussed. The use of meters in the more arid section of the state should be encouraged, and, while it might not be practicable in this case to order applicant to at once install meters on all of its service, the opinion expressed that this should be done as rapidly as possible, and until it is done any flat rate should be on such a basis as to insure that the wasteful user will pay a reasonable proportion of the cost of the service furnished him.

Held, That the water company should install meters and service connections at its own cost. Just and reasonable rates prescribed.

Frank J. Thomas, for applicant.
Chas. M. Ackerman, for consumers.

REPORT OF THE COMMISSION.

This is an application by the Hawthorne Electric and Water Company for an order fixing rates to be charged by applicant for the sale and delivery of water.

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Applicant was incorporated in July, 1909, and theretofore the water producing and delivering plant was operated by the same people who later incorporated this company.

These same people also organized the Hawthorne Improvement Company, which was a land company, and other corporations for the purpose of manufacturing, etc. Apparently the promoters' primary consideration was the sale of land, and in order to promote this, water was produced and delivered upon the land. As an evidence of this, attention is called to the fact that for the first three years from 1907 water was furnished from this plant free to all consumers.

In 1910 a flat rate of $1.00 was established, and this rate prevailed to January, 1912. Under this rate the consumer was allowed to use an unrestricted amount of water, and no attempt was made during this period to cut down or regulate the amount of water used. In January, 1912, a portion of the services were metered and a quantity charge made under the rates now in existence.

Much testimony and other evidence was introduced at the hearing to establish the physical value of this property, and the applicant, through its engineer, set out at length its theory of the basis on which a value should be placed on its pumped water. Applicant pumps all of its water from wells sunk in land which it owns, and the market value of which land, determined by comparing it with surrounding lands, is included in the plant value, and it is in addition to this that applicant demands that a value be included, based upon its pumped water.

Applicants confess in their application that to fix rates which would return a reasonable amount on what they claim to be their investment in this water plant, would result in a prohibitive rate such as the present consumer could not afford to pay because of the fact that the consumers are small in number compared to the ability of the plant to furnish water. Here, then, we have what in effect amounts to a statement by applicant that some other basis must be used in fixing rates than a reasonable percentage on physical values, unless the applicant has in mind the rule that when a plant is constructed of a magnitude greater than the needs of its consumers require, such consumers should not be called upon to provide a revenue through rates on such excessive construction.

We do not believe it necessary in determining this matter to go extensively into the question of physical values presented by the applicant, which are by admission greater than the patrons of this system can be required to yield a return upon. In fact, were we to fix rates as asked by applicant, there is grave question whether anything like the present quantity of water would be consumed, and it might easily be that the consumption of water would be so largely reduced as to result in a serious loss of revenue to applicant.

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Experience has shown that where there is any necessity of conserving water, the flat rate, by which, in return for a fixed sum per month, the water consumer is allowed to use any amount of water he sees fit, results not only in a waste of water but in discrimination, because notwithstanding however careful and considerate the prudent consumer may be in the use of water, he has no advantage over the user who wilfully or carelessly wastes it. Furthermore, the flat rate offers no opportunity to distribute the burden of cost upon a fair basis of quantity of service furnished the consumer, because within the limit of the flat rate the smallest consumer pays as much as the largest. This principle must not be carried to the extent of preventing the establishment of a fair minimum charge, for this latter is based on the necessity of compelling each consumer to bear some part of the burden of furnishing the utility. Hence we wish to encourage the use of meters, or the measured service, in the more arid section of the State, and while it might not be practicable in this case to order applicant to at once install meters on all of its service, we believe that this should be done as rapidly as possible, and furthermore, until this is done, any flat rate should be on such a basis as to insure that the wasteful user will pay a reasonable proportion of the cost of the service furnished him. A comparatively heavy charge for an unlimited supply of water will not injure the careful small user, as he can resort to the meter rate. Furthermore, we believe that the water company should install meters at its own cost, as meters are properly a part of the plant, and there is no more reason for compelling a consumer to pay the purchase price and the cost of installing a meter than there is to force him to purchase a pump or an engine or any other part of the plant. For the same reasons, we believe that the water company should make all service connections at its own cost.

It may appear that the rates fixed in the following order are somewhat higher than the rates charged by other companies in the county of Los Angeles, but it should be remembered that the fixing of a uniform rate for all utilities in each class might work gross injustice because of greatly varying conditions as between the operations of one company and another. In this case we are not considering the conditions of other water companies, but are passing only on those of the company before us.

Having given careful consideration to all of the factors presented as aiding to a conclusion of what just and proper rates should be, we find that the rates set out in the following order are just and reasonable rates.

ORDER.

Hawthorne Electric and Water Company having filed with this Commission an application to establish rates for water furnished its cus-

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tomers and consumers, and said application having been set for hearing and notice of said hearing having been published by direction of this Commission, and a public hearing having been held on said application in the city of Los Angeles, county of Los Angeles, and being fully informed in the premises,

It is hereby found as a fact that the following rates are reasonable to be charged by said Hawthorne Electric and Water Company for water delivered to its consumers, and the said rates are hereby established to become effective on the 1st day of January, 1913:

Meter rates:
Minimum charge, $1.25 per month for 750 cubic feet or less.
Next 750 cubic feet, 12½ cents per month, per 100 cubic feet.
Over 1,500 cubic feet, 10 cents per month, per 100 cubic feet.
Flat rate, $1.50 per month.

It is further ordered that meters be placed at the request of the consumer or at the option of the company, and that such meters and their placement be at the expense of the company, all service connections to be made at the expense of the company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of December, 1912.

DECISION No. 357.

IN THE MATTER OF THE APPLICATION OF SIERRA AND SAN FRANCISCO POWER COMPANY AND GOLD MOUNTAIN WATER COMPANY FOR AN ORDER APPROVING THE PURCHASE BY THE SIERRA AND SAN FRANCISCO POWER COMPANY OF ALL THE PROPERTY OF GOLD MOUNTAIN WATER COMPANY.

Application No. 300.

Decided December 6, 1912.

Held, Upon facts and circumstances set forth, that it will be to the interests of the residents and water users now supplied by applicant to grant the application.

Warren Gregory, for Sierra and San Francisco Power Company.
F. W. Street, for Gold Mountain Water Company.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

It developed at the hearing of this application that the Gold Mountain Water Company was organized many years ago to furnish water to the city of Sonora, Tuolumne County; that the company gets its water from several springs, the title to the land upon which said springs are located having been acquired by purchase at different times from miners who had filed water rights.

The company has never asked for or received a franchise from the city of Sonora, depending upon constitutional rights acquired by long use.

The entire stock of the company is owned by Mrs. R. Ferguson, with the exception of four shares which stand in the name of her children, to qualify them as directors, and as she does not desire to make further investment in extensions, she desires to sell to the Sierra and San Francisco Power Company, which company will apply to the city of Sonora for franchise for necessary extensions and increase and better the service to the advantage of the residents and water users of the city of Sonora.

The financial condition of the Sierra and San Francisco Power Company was stated in the pleadings and supported by testimony at the hearing, as follows:

(*a*) The total amount of its authorized capital stock is $20,000,000, divided into 200,000 shares of the par value of $100 each. That all of said capital stock is common stock, but the same may by a vote of the majority in amount thereof be classified as preferred and common shares, upon such terms and conditions as a majority of the stockholders may agree upon.

(*b*) That all of the aforesaid capital stock is issued and outstanding.

(*c*) A brief description of all mortgages upon the property of the Sierra and San Francisco Power Company is as follows, to wit:

First—A supplemental first mortgage dated July 27, 1910, supplementing and amending a first mortgage dated August 31, 1909, to secure a present authorized issue of $10,500,000 face amount of 5 per cent forty-year gold bonds maturing August 1, 1949, which bonds are subject by the terms of said supplemental mortgage to be increased to $30,000,000.

Second—A supplemental indenture of second mortgage dated July 27, 1910, supplementing and amending a second mortgage dated August 31, 1909, to secure $1,000,000 of second mortgage 6 per cent bonds, Series "A," and $8,500,000 5 per cent bonds, Series "B."

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That of the aforesaid bonds the following are outstanding:

Of the said first mortgage, $6,500,000 in face amount;

Of the second mortgage Series "A," $900,000;

Of the second mortgage Series "B," $8,500,000.

(*d*) That the Sierra and San Francisco Power Company has a floating and unsecured indebtedness for current expenses not exceeding $200,000 at the date hereof.

(*e*) That the Sierra and San Francisco Power Company has paid interest upon its outstanding bonds during the present fiscal year in the sum of $363,149. That it has not paid any dividends upon its capital stock. A statement of its earnings and expenditures showing its condition at the close of the last fiscal year was filed with the pleadings and marked Exhibit "B."

Applicant, the Sierra and San Francisco Power Company, testified that it could not state the value of its property exactly, but that the valuation was being made, and in its opinion it would be in the neighborhood of $27,500,000.

The application also sets forth the financial condition of the Gold Mountain Water Company as follows, which was supported by testmony:

(*a*) The amount and kind of stock authorized is $100,000, divided into 500 shares of the par value of $200 each, all of which is authorized and outstanding.

(*b*) That all of said stock is common stock.

(*c*) The Gold Mountain Water Company has indebtedness as follows: A certain mortgage given to Pietro Guizo to secure a note for the sum of $3,500, and small sums for current expenses, not exceeding $500; that it has never issued any bonds.

(*d*) That the amount of interest paid by said company during the previous fiscal year is $175, the rate being 5 per cent per annum on the mortgage above referred to, $35,000.

(*e*) That no dividends as such have been declared upon the capital stock of said company during the previous five fiscal years, for the reason, as before stated, that Mrs. R. Ferguson is the sole owner and has from time to time received from said corporation any surplus that might then exist without any formal dividends having been declared; that the company is at present unable to state the exact amount of such surplus so distributed, but estimates that it has been approximately $2,000 per year during the said period of five years.

Said Gold Mountain Water Company presents herewith a detailed statement of its earnings and expenditures for the last fiscal year, marked Exhibit "C."

The property of said Gold Mountain Water Company consists of

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certain lots of land in the city of Sonora specifically described as lots 25 and 26 in block 50; lot 29 in block 29; lots 14, 21 and 36 in block 51, as per the official plat of said city on file in the recorder's office of Tuolumne County; also certain lots at Browns Flat in said county designated as lots 16, 19, 21, 36, 41, 42, 43, 44, 45 and 50, as per the plat of Browns Flat Mining Association Tract, on file in the office of the county clerk of said county of Tuolumne; and also certain springs, reservoirs, ditches, flumes, pipe lines, pumps, machinery and appliances, used by Gold Mountain Water Company in supplying water to the city of Sonora and its inhabitants.

Applicants claim that the property for which permission to transfer is asked is fairly and reasonably worth the sum to be paid therefor, to wit, $27,500.

Applicants allege that the Gold Mountain Water Company desires to sell said property for the reason that the owner, Mrs. R. Ferguson, finds it burdensome to give the requisite care and attention to the management of the said company, and that the Sierra and San Francisco Power Company desires to purchase said property, for the reason that it can advantageously manage the same in connection with its other plants in the said county of Tuolumne, the other plants of said Sierra and San Francisco Power Company in said county being devoted to the sale and distribution of water throughout said county of Tuolumne for irrigation, mining and domestic purposes.

Mr. A. L. Cowell, Executive Secretary Irrigation Districts Association of California, appeared at the hearing in the interests of certain irrigation districts on the Tuolumne and Stanislaus rivers and stated to the Commission that if the Sierra and San Francisco Power Company contemplated a different and more extended service than had been given by the Gold Mountain Water Company, such service might be found to interfere with the rights of irrigation districts, the idea being that water which is not now used by the Gold Mountain Water Company, which runs into the Tuolumne and Stanislaus rivers, might be diverted by the Sierra and San Francisco Power Company in its future operations of the plant of the Gold Mountain Water Company.

The testimony showed, however, that the water supply of the Gold Mountain Water Company was derived from springs, no water from which flowed over the surface of the ground and that the only waters which could be thus diverted are the waters of Wood Creek, used only as motive power to run a wheel to pump the waters of said springs; that after said waters of Wood Creek have furnished power for the wheel they run on in their natural course without any further interference by the Gold Mountain Water Company.

The Sierra and San Francisco Power Company testified that its

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application is to purchase only such rights as the Gold Mountain Water Company possesses.

Applicants testified that the people of the city of Sonora were anxious that the transfer should be made, and presented certificate of publication of the notice of the hearing of said application in two weekly papers published in Sonora.

I find that it will be to the interests of the residents and water users now supplied by the Gold Mountain Water Company to grant the application and submit the following order:

ORDER.

The Sierra and San Francisco Power Company having applied for permission to purchase the distributing plant and real estate of the Gold Mountain Water Company of Sonora, California, and the Gold Mountain Water Company having joined in said application, and it appearing, as set forth in the preceding opinion, that the best interests of all concerned will be served by granting the application, and that public convenience and necessity will be served thereby,

It is hereby ordered that the Sierra and San Francisco Power Company be and it is hereby authorized to purchase, and the Gold Mountain Water Company be and it is hereby authorized to sell to said Sierra and San Francisco Power Company its water distributing plant and real estate in Tuolumne County consisting of lots 25 and 26 in block 50, lot 29 in block 29; lots 14, 21 and 36 in block 51, as per the official plat of said city on file in the recorder's office of Tuolumne County; also certain lots at Browns Flat in said county designated as lots 16, 19, 21, 29, 36, 41, 42, 43, 44, 45 and 50, as per the plat of Browns Flat Mining Association Tract, on file in the office of the county clerk of said county of Tuolumne; and also certain springs, reservoirs, ditches, flumes, pipe lines, pumps, machinery and appliances, for the sum of $27,500, the said Gold Mountain Water Company to pay its present indebtedness and turn over said property to the Sierra and San Francisco Power Company free of incumbrances.

By granting this application the Railroad Commission of the State of California does not bind itself to accept said price of $27,500, as the fair and reasonable value of said property for rate-fixing purposes, nor does it make finding in this regard.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 6th day of December, 1912.

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DECISION No. 358.

IN THE MATTER OF THE APPLICATION OF MIDLAND COUNTIES GAS AND ELECTRIC COMPANY TO PURCHASE CERTAIN SHARES OF THE CAPITAL STOCK OF RUSSEL ROBISON WATER AND ELECTRIC COMPANY; OF THE COALINGA WATER AND ELECTRIC COMPANY TO SELL CERTAIN SHARES OF THE CAPITAL STOCK OF RUSSEL ROBISON WATER AND ELECTRIC COMPANY; AND OF RUSSEL ROBISON WATER AND ELECTRIC COMPANY AND COALINGA WATER AND ELECTRIC COMPANY FOR THE TRANSFER OF CERTAIN REAL ESTATE IN THE TOWN OF ARROYO GRANDE FROM COALINGA WATER AND ELECTRIC COMPANY TO RUSSEL ROBISON WATER AND ELECTRIC COMPANY.

Application No. 299.

Decided December 6, 1912.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by Midland Counties Gas and Electric Company to purchase one hundred seventy-seven shares of the capital stock of Russel Robison Water and Electric Company from Coalinga Water and Electric Company. Coalinga Water and Electric Company joins in the application. Application is also made for the transfer of certain real estate in the Town of Arroyo Grande from Coalinga Water and Electric Company to Russel Robison Water and Electric Company.

Russel Robison Water and Electric Company owns and operates an electric light plant and water works in and about the town of Arroyo Grande, San Luis Obispo County. One hundred and eighty shares of capital stock have been issued by Russel Robison Water and Electric Company.

Midland Counties Gas and Electric Company owns and operates an electric light plant in San Luis Obispo, San Luis Obispo County, and in Santa Maria, Santa Barbara County, and intends to operate transmission lines between said towns to distribute electric power to the territory adjacent to said lines. Midland Counties Gas and Electric Company is subsidiary to Coalinga Water and Electric Company, which owns 80 per cent of the issued capital stock of Midland Counties Gas and Electric Company. Coalinga Water and Electric Company

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also own one hundred seventy-seven shares of the issued capital stock of Russel Robison Water and Electric Company, acquired by purchase on March 20, 1912, for the sum of $35,000.

It is set forth in the application that the location of Russel Robison Water and Electric Company in the town of Arroyo Grande, between San Luis Obispo and Santa Maria makes it advisable that it should be operated by Midland Counties Gas and Electric Company rather than by Coalinga Water and Electric Company. Application is made, therefore, that Midland Counties Gas and Electric Company be given authority to purchase the one hundred seventy-seven shares of capital stock of Russel Robison Water and Electric Company now held by Coalinga Water and Electric Company, for the sum of $35,000 plus interest for six months at the rate of 6 per cent per annum and $450 representing the costs of certain additions to the plant of said Russel Robison Water and Electric Company made by said Coalinga Water and Electric Company.

It is further set forth in the application that at the time of the purchase of the stock of Russel Robison Water and Electric Company by Coalinga Water and Electric Company, it was found that the title to certain real property in the town of Arroyo Grande used by said Russel Robison Water and Electric Company stood in the name of Russel Robison, and by inadvertence said real property was conveyed to said Coalinga Water and Electric Company instead of to Russel Robison Water and Electric Company. It is now desired that this real property be transferred by Coalinga Water and Electric Company to Russel Robison Water and Electric Company in order that the real intention of the parties to the original purchase of said stock by Coalinga Water and Electric Company be carried out. The real property which it is desired to transfer is described in detail on page 5 of this application.

The application as filed with the Commission petitions also for an order authorizing the transfer to Russel Robison Water and Electric Company by Russel Robison of franchises owned by said Russel Robison. At the hearing it was requested that consideration of this part of the application be delayed until a later date when it will be made the subject of a further application.

I find that public convenience and necessity will be served by allowing the purchase of the capital stock of Russel Robison Water and Electric Company by Midland Counties Gas and Electric Company so that it may be operated by the utility covering the territory in which Russel Robison Water and Electric Company is located. I find also that public convenience and necessity will be served by allowing the transfer of real estate used by Russel Robison Water and Electric

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Company and owned by Coalinga Water and Electric Company to Russel Robison Water and Electric Company.

I therefore recommend the following order:

ORDER.

Midland Counties Gas and Electric Company having applied to this Commission for authority to purchase one hundred seventy-seven shares of the capital stock of Russel Robison Water and Electric Company, and Coalinga Water and Electric Company having joined in the application to sell said shares of Russel Robison Water and Electric Company to Midland Counties Gas and Electric Company, and Russel Robison Water and Electric Company and Coalinga Water and Electric Company having made application for an order authorizing the transfer of certain real estate in the town of Arroyo Grande from Coalinga Water and Electric Company to Russel Robison Water and Electric Company; and a hearing having been held and it appearing that public convenience and necessity will be served by granting the application as applied for,

It is hereby ordered that Midland Counties Gas and Electric Company be permitted to purchase one hundred seventy-seven shares of the capital stock of Russel Robison Water and Electric Company for $35,000 plus interest for six months at the rate of 6 per cent per annum and $450 as applied for, said price being $36,500; that Coalinga Water and Electric Company be permitted to sell said one hundred seventy-seven shares of the capital stock of Russel Robison Water and Electric Company at said price; that Coalinga Water and Electric Company be permitted to transfer to Russel Robison Water and Electric Company that certain piece of real estate in the town of Arroyo Grande used by Russel Robison Water and Electric Company as described in detail on page 5 of the application herein considered.

As a condition to this order it is understood that the Commission is not committed to the acceptance of $36,500 or any other sum as the fair value of the property of Russel Robison Water and Electric Company in any future consideration of the affairs of the applicants herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 6th day of December, 1912.

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DECISION No. 359.

IN THE MATTER OF THE APPLICATION OF L. W. WARMOTH TO SELL AND THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY TO PURCHASE A TELEPHONE SYSTEM.

Application No. 274.

Decided December 6, 1912.

H. D. Pillsbury, for Pacific Telephone and Telegraph Company.
W. A. Fish, for L. W. Warmoth.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is a joint application by L. W. Warmoth and The Pacific Telephone and Telegraph Company for an order of this Commission, authorizing said Pacific Telephone and Telegraph Company to purchase from said L. W. Warmoth, for the sum of $4,500, a certain telephone system now owned and operated by said L. W. Warmoth.

L. W. Warmoth has, since the year 1895, been operating a telephone system in and around Paskenta, in Tehama County. Successive additions to this system have been made so that at the present time Mr. Warmoth's system extends from Corning via Henleyville, Flournoy and Paskenta, in Tehama County, to Newville, in Glenn County. This system has grown to such an extent that Mr. Warmoth is not able to give it the attention which it requires, and so is desirous of transferring the property to the Pacific Telephone and Telegraph Company. Mr. Warmoth has at the present time, various connecting agreements with other telephone systems so that the parties who are on Mr. Warmoth's system are able to get through connections and long distance service.

At the hearing upon this application the representatives of the Pacific Telephone and Telegraph Company testified that they had no intention, provided this transfer was permitted, of using the transfer as a basis for changing the schedule of rates now charged by L. W. Warmoth, or of altering in any manner, the character and extent of the telephone service now furnished by L. W. Warmoth by virtue of connecting agreements between his system and other adjoining telephone systems. Any questions of an alteration of service or any alteration in rates are matters apart from this application and are proper subjects for separate consideration at such time as the Commission may deem expedient.

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Under these circumstances I can find no valid objection to the granting of this application, and I accordingly submit herewith the following form of order:

ORDER.

L. W. Warmoth and Pacific Telephone and Telegraph Company having applied to this Commission for an order permitting Pacific Telephone and Telegraph Company to purchase from L. W. Warmoth, for the sum of $4,500, a certain telephone system now owned by said L. W. Warmoth, and a public hearing having been duly held upon this application,

It is hereby ordered that the Pacific Telephone and Telegraph Company be and the same hereby is authorized to purchase, and that L. W. Warmoth be and he is hereby authorized to sell, for the sum of $4,500, all of the telephone lines and equipment owned by said L. W. Warmoth and constituting the telephone system now operated by said L. W. Warmoth in the counties of Tehama and Glenn, California.

The transfer herein authorized shall not be regarded as in any way permitting Pacific Telephone and Telegraph Company to diminish, in any particular, the character and extent of the service now furnished by L. W. Warmoth, by virtue of the various connecting agreements between L. W. Warmoth's system and other adjoining telephone systems.

The price which the Pacific Telephone and Telegraph Company is to pay for said telephone system shall not be taken before this Commission, or any other public body, as representative for rate fixing, or other purposes, of the present fair value of said property.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of December, 1912.

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DECISION No. 360.

MODESTO AND EMPIRE TRACTION COMPANY
vs.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 235.

Decided December 6, 1912. Supplemental Order.

Authorizing respondent to continue rates between certain points higher than the rates concurrently in effect between said points and points on complainant's line, without prejudice to and pending final decision of the Commission in the long and short haul matter.

REPORT OF THE COMMISSION.

The Commission in the above entitled matter, decided August 14, 1912, having ordered the carriers involved in this proceeding, to establish a through route between all points on The Atchison, Topeka and Santa Fe Railway Company, San Francisco and Empire, California, inclusive, and all points on the Modesto and Empire Traction Company's line, and having prescribed as reasonable for such service rates not to exceed—for less than carload freight, 65 per cent of the local rate of the Atchison, Topeka and Santa Fe Railway Company between the points involved and Empire, plus the local rate of the Modesto and Empire Traction Company; and for carload freight 75 per cent of the local rate of the Atchison, Topeka and Santa Fe Failway Company between the points involved and Empire, plus the local rate of the Modesto and Empire Traction Company; and such joint rates being in some cases lower than the local rates of the Atchison, Topeka and Santa Fe Railway Company between San Francisco and Empire, California, and between points intermediate thereto; and the local rates of the Atchison, Topeka and Santa Fe Railway Company not having been in question in this proceeding, the Commission is of the opinion that an order should be issued authorizing that company to maintain the higher rates at the intermediate points, without prejudice to, and pending final decision of, the long and short haul matter.

It is therefore ordered that the Atchison, Topeka and Santa Fe Railway Company be and it is hereby authorized to continue rates between San Francisco and Empire, California, and between points intermediate thereto, higher than the rates concurrently in effect between points on the Atchison, Topeka and Santa Fe Railway, San Francisco and Empire, California, inclusive, and points on the Modesto and Empire Traction Company's line, without prejudice to, and pending final decision of, the long and short haul matter.

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The Commission does not hereby approve any rates that may be continued or established under this authority, except those rates which have heretofore been the subject of the Commission's order, all other rates being subject to complaint, investigation and correction if in conflict with any other provision of the Public Utilities Act.

Dated at San Francisco, California, this 6th day of December, 1912.

DECISION No. 361.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACKS AT GRADE ACROSS THE TRACKS OF SOUTHERN PACIFIC COMPANY, NEAR RAYMER, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 221.

Decided December 10, 1912.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company, a corporation, having on September 11, 1912, filed with the Commission an application for permission to construct its double track main line at grade across the track of Southern Pacific Company, at a point between Raymer and Hewitt, Los Angeles County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that Southern Pacific has agreed to said crossing at grade as shown by agreement made and entered into between the parties of date December 2, 1912, a copy of which is filed with the application; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing at said point of proposed crossing and that the application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted Pacific Electric Railway Company to construct its double track main line at grade across the track of Southern Pacific Company at a point between stations Raymer and Hewitt, Los Angeles County, California, as shown by the map and profile attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with the cost of maintenance thereafter, in good and first-class condition, shall be borne by applicant.

(2) All overhead wires or obstructions constructed at the crossing

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shall have a clearance above the rails of either company of twenty-two (22) feet. All pole lines, and other side obstructions, shall have a clearance from the center line of the tracks of either company of eight (8) feet.

(3) Applicant shall, for the protection of the crossing, at its own expense, within one year after date of this order, construct and install a first-class, standard interlocking device of such plan and design, and constructed in accordance with such specifications as this Commission shall approve.

Applicant shall submit the proposed plan and specifications for said device to this Commission for approval within ninety (90) days after the date of this order.

(4) The cost of maintaining and operating the said interlocking device after its completion shall be divided equally between applicant and the Southern Pacific Company.

(5) After the completion of the said interlocking device, upon application of the parties, the Commission will direct an inspection of same, and if completed in accordance with the plans and specifications previously approved, its operation will be authorized by special order of the Commission. Said device shall thereafter be maintained and operated in accordance with such rules and regulations as the Commission may issue governing in such matters.

(6) Until said interlocking device is completed and placed in operation under the approval of the Commission, all engines, trains and cars of applicant shall come to a full stop before passing over the crossing and within fifty (50) feet thereof, and shall not pass over the crossing until the conductor, or other employee of applicant has first gone thereon and ascertained that no engine, train or car of Southern Pacific Company is approaching the crossing from either direction.

Should no engine, train or car be approaching then said conductor or other employee may signal and permit his train, motor, or car to proceed over the crossing.

All engines, trains, or cars of Southern Pacific Company shall be operated over the crossing, until the interlocking device above provided for is completed, under control and at a speed not exceeding fifteen (15) miles per hour, provided that proper signals are given by whistle and bell within sufficient distance before reaching the crossing to advise the employees of applicant of such approach.

(7) The Commission reserves the right to hereafter make such further orders relative to the location, construction, maintenance, and operation of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of December, 1912.

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DECISION No. 362.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS ELM AND SYCAMORE STREETS, CITY OF RED BLUFF, TEHAMA COUNTY, CALIFORNIA.

Application No. 308.

Decided December 10, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on December 3, 1912, filed with the Commission its application for permission to construct a spur track at grade across Elm and Sycamore streets in the city of Red Bluff, Tehama County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, and that the board of trustees of said city of Red Bluff has issued the necessary permit or franchise authorizing the construction of said track at grade across said streets, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said streets and that the said application should be granted subject to the conditions hereinafter specified.

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a spur track at grade across Elm and Sycamore streets in the city of Red Bluff, Tehama County, California, on the north line of its present main line track and between Monroe and Madison streets, as shown by the map attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings together with their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) The applicant shall so construct the crossings as not to interfere with public travel over or along said streets, as provided in the ordinance authorizing the construction of said track.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said spur track as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of December, 1912.

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DECISION No. 363.

IN THE MATTER OF THE APPLICATION OF COUNTY OF TULARE FOR PERMISSION TO CONSTRUCT THREE (3) PUBLIC HIGHWAY CROSSINGS AT GRADE OVER THE TRACK OF THE SOUTHERN PACIFIC COMPANY NEAR TERRA BELLA, TULARE COUNTY, CALIFORNIA.

Application No. 307.

Decided December 10, 1912.

REPORT OF THE COMMISSION.

County of Tulare having on December 2, 1912, filed with the Commission its application for authority to construct three (3) public highway crossings at grade across track of Southern Pacific Company at or near the town of Terra Bella, Tulare County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured an easement from Southern Pacific Company dated October 28, 1912, authorizing the construction of said crossings, and it further appearing that it is not reasonable nor practicable to avoid grade crossings with said track and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted county of Tulare to construct three (3) public highway crossings at grade across the track of Southern Pacific Company in Tulare County, California, as shown by the maps attached to the application, viz:

(1) Between the towns of Lois and Terra Bella on the line between sections 27 and 34, township 22 south, range 27 east, at engineer's station 4599+20.

(2) On the north side of the town of Terra Bella at the crossing of Eucalyptus street with both the main line and spur track of Southern Pacific Company and at engineer's station 4652.

(3) Between the towns of Terra Bella and Ducor in section 27, township 23, south, range 27 east, and at engineer's station 4889+81.

All of said crossings to be constructed subject to the following conditions, viz:

a. The entire expense of constructing the crossings shall be borne by applicant. The expense of maintaining the crossings on each side of the tract and up to within two (2) feet thereof shall be borne by applicant. The maintenance hereafter of the crossings over the track and to a distance of two (2) feet on each side thereof shall be borne by Southern Pacific Company.

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b. The crossings shall be constructed of a length not less than twenty-four (24) feet with grades of approach not exceeding eight (8) per cent, and shall be ballasted with first-class stone or gravel ballast to a depth of not less than six (6) inches.

c. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of December, 1912.

DECISION NO. 364.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A SPUR TRACK AT GRADE ACROSS "K" STREET, CITY OF FRESNO, FRESNO COUNTY, CALIFORNIA.

Application No. 314.

Decided December 10, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on December 5, 1912, filed with the Commission an application for permission to construct a spur track at grade across "K" street, city of Fresno, Fresno County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary permit or franchise from the board of trustees of the city of Fresno, Fresno County, California, to construct said spur track at grade across said street, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said street and that said application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a spur track at grade across "K" street on the north side of the main tracks of said company between San Diego and Los Angeles streets, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with

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the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for said crossing and shall ballast the crossing with first-class stone or gravel ballast to a depth of not less than six (6) inches.

(3) Said crossing shall be constructed of a width not less than forty-eight (48) feet and with grades of approach not exceeding eight (8) per cent.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of December, 1912.

DECISION No. 365.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SIDETRACK AT GRADE ACROSS CHAPMAN STREET, TOWN OF McPHERSON, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 313.

Decided December 10, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on December 5, 1912, filed with the Commission an application for permission to construct a sidetrack at grade across Chapman street, town of McPherson, Los Angeles County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that McPherson is not an incorporated town and therefore a permit or franchise is not necessary for the construction of said track, and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said street, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a sidetrack at grade across Chapman

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street in the town of McPherson, Los Angeles County, California, on the west side of the main line of said company, as shown by the map attached to the application subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for the construction of said crossing and shall ballast same with first-class gravel or stone ballast to a depth of not less than six (6) inches.

(3) Said crossing shall be constructed of a width of not less than thirty-two (32) feet with grades of approach not exceeding eight (8) per cent.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 10th day of December, 1912.

DECISION No. 366.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS, FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO IT BY ORDINANCE NO. 193, NEW SERIES, OF THE CITY OF BERKELEY AND ORDINANCE NO. 129 OF THE COUNTY OF ALAMEDA.

Application No. 315.

Decided December 10, 1912.

REPORT OF THE COMMISSION.

San Francisco-Oakland Terminal Railways, having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of Berkeley in its Ordinance No. 193, new series, adopted August 6, 1912, and by the county of Alameda, in its Ordinance No. 129, adopted June 24, 1912, by which ordinances applicant is given

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the right to lay down, construct, maintain and operate a single or double track street railroad along and upon certain portions of Euclid avenue and Eunice street in said city of Berkeley and in said county of Alameda, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

It is hereby declared that public convenience and necessity require the exercise by San Francisco-Oakland Terminal Railways of the rights and privileges granted to said company by the city of Berkeley in its Ordinance No. 193, New Series, and by the county of Alameda in its Ordinance No. 129.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of December, 1912.

DECISION No. 367. Not used.
DECISION No. 368. Not used.

DECISION No. 369.

MAMMOTH COPPER MINING COMPANY OF MAINE
vs.
SOUTHERN PACIFIC COMPANY.

Case No. 300.

Decided December 20, 1912.

Complainant asks for the establishment of a rate of $3.00 per ton of 2,000 pounds on blister copper in anodes, pigs or bars in carload lots from Kennett to Oakland Long Wharf and San Francisco, the present rate being $11 per ton on actual value not exceeding $300 per ton. On a valuation of $400 the existing rate is $13 per ton. The value of blister copper is about $400 per ton. Rule 7 of respondent's local joint and proportional freight tariff No. 635—A, C. R. C. No. 1290, applied to copper matter having a value of $400 per ton, if such matte were offered for shipment in carload lots with a minimum of 30,000 pounds, would show a resultant rate of $6.90 per ton from San Francisco to Kennett. The evidence in the case showing that the distinction between copper matte and blister copper, as affects the proper rate, is mostly one of valuation, *held*, it appears reasonable to assume that $6.90 per ton of 2,000 pounds would be at least a fair and reasonable rate based on the defendant's known rate on copper matte from San Francisco to Kennett on blister copper, actual value not to exceed $400 per ton carload minimum weight 30,000 pounds, and that upon all the facts surrounding the movements in both directions the same rate for movement in the reverse direction, from Kennett to San Francisco would be at least reasonable.

Case of Railroad Commission of *Ohio* vs. *Worthington*, 225 U. S. 101, discussed and distinguished.

Pillsbury, Madison & Sutro, for complainant.
George D. Squires, for defendant.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an action for the establishment of a rate on blister copper moving from Kennett, in Shasta County, California, to Oakland Long Wharf and San Francisco. Complainant asks for the establishment of a rate of $3.00 per ton of 2,000 pounds on blister copper in anodes, pigs or bars in carload lots from Kennett to Oakland Long Wharf and San Francisco.

Complainant originally asked that the rate established be, on blister copper, released to a valuation of one hundred dollars ($100) per ton and considerable evidence was introduced on this question of release valuation. Before the termination of the hearing, however, complainant asked that the request for release value be striken from the complaint and this was done.

Complainant is the owner of a copper mine and smelter near Kennett, California. In its smelter it subjects crude copper ore to furnace treatment, securing therefrom a product known as copper matte, which contains generally somewhere between 40 per cent and 50 per cent of copper. The copper matte is then placed in a converter and converted into blister copper, which contains about 98 per cent of copper. The blister copper is then shipped to complainant's refinery at Chrome, New Jersey, where it is refined into commercial copper, which is then shipped to different points, principally New England, for manufacture into articles of commerce. The value of blister copper is about $400 per ton.

The existing rate on blister copper in carload lots from Kennett to San Francisco is $11 per ton of 2,000 pounds, actual value not to exceed $300 per ton. The rate on a valuation of $400 is $13 per ton.

At the hearing complainant relied on rates which were largely the results of water competition or proportional rates. I am of the opinion that these rates cannot properly be used as basis of comparison for a rate under the circumstances and conditions disclosed by the facts in this case affecting movements from Kennett to San Francisco. The plaintiff, however, pointed to certain material considerations affecting the question of a proper rate from Kennett to San Francisco. Complainant drew attention to the fact that blister copper cannot be injured by the elements; that it is almost impossible to lose it in transportation; that defendant transports a large number of cars of coke for use by complainant's smelter at Kennett and that shipments of blister copper from complainant's plant permit the use of about one fourth of these cars for return movements; that if it were not for the blister copper so transported most of these cars would have to be returned empty; and that the haul from Kennett to San Francisco is mostly down hill.

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Complainant relies also for purposes of comparison on a rate of $3.50 per ton of 2,000 pounds, on copper matte in carload lots from San Francisco to Kennett, first made effective March 28, 1908, actual value not to exceed $100 per ton. Effective July 31, 1910, this rate was amended to read "actual value not to exceed $150 per ton." As this rate was established by defendant voluntarily, it must be assumed as against defendant that it was a fair and reasonable rate for the movement in question. It must be noted, however, that this rate is a rate on copper matte and not on blister copper, and that it applies to copper matte, of which the actual value is not to exceed $150 per ton. On copper matte of a higher valuation from San Francisco to Kennett, in case such higher valuation were found, charges would be assessed in accordance with Rule 7 of the Southern Pacific Company's local, joint and proportional freight tariff No. 635–A, C. R. C. No. 1290, providing in part as follows:

> "When rates on ore, concentrates, sulphurets, metal, bullion, matte, etc., of value in excess of $100 per ton of 2,000 pounds are not specifically shown between any two points in this tariff, rates for valuation in excess of $100 per ton of 2,000 pounds, but not over $200 per ton of 2,000 pounds will be 120 per cent of the rates applicable on ore, etc., of $100 per ton of 2,000 pounds valuation; on valuations in excess of $200 per ton of 2,000 pounds but not over $300 per ton of 2,000 pounds, rates will be 140 per cent of the rates applicable on ore, etc., of $100 per ton of 2,000 pounds valuation; on valuations in excess of $300 per ton of 2,000 pounds the rate will be made by adding to the rate given for $300 valuation, two per cent on the value above $300 per ton of 2,000 pounds.

If this rule were applied to copper matte having a value of $400 per ton, if such matte were offered for shipment, such copper matte in carload lots with a minimum of 30,000 pounds would have a rate of $6.90 per ton from San Francisco to Kennett. The evidence submitted in this case shows that the distinction between copper matte and blister copper as affects the proper rate, is mostly one of valuation. Hence, it appears reasonable to assume that $6.90 per ton of 2,000 pounds would be at least a fair and reasonable rate based on the defendant's known rate on copper matte from San Francisco to Kennett on blister copper, actual value not to exceed $400 per ton carload minimum weight 30,000 pounds, from San Francisco to Kennett.

Assuming that this is a reasonable constructive rate for movements of blister copper from San Francisco to Kennett, it would seem from the evidence in this case that such rate would be at least a reasonable rate for movement in the reverse direction, from Kennett to San Francisco. If there should be any difference between these two movements, the rate from Kennett to San Francisco should be the smaller one

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because of the facts which have hereinbefore been referred to, affecting movements from Kennett to San Francisco. I have taken into consideration all the facts surrounding the movements in both directions, as disclosed by the testimony in this case.

Defendant has contended that this Commission has no authority to establish a rate on blister copper from Kennett to San Francisco, for the reason that it claims that complainant intends to load the copper at Oakland Long Wharf or San Francisco on vessels which are then to transport it to complainant's factory at Chrome, New Jersey. Defendant claims that the movement is accordingly an interstate movement throughout its entire extent, and on this point relies on the case of *Railroad Commission of Ohio* vs. *Worthington*, 225 U. S. 101, decided on May 27, 1912. The facts of that case, however, are entirely different from the facts of this case. In the *Worthington* case, two rates for coal were in effect from the No. 8 coal district of Ohio to Huron and Cleveland, Ohio. One rate was a rate of $1.00 per ton on commercial coal, which coal was to remain in Ohio. The other rate was a rate of 90 cents per ton on what is called lake-cargo coal, which coal was not to remain in Ohio, but was to be transported to points in other states. This rate of 90 cents per ton included the transportation to Huron or Cleveland and also the loading of the coal into the vessels which were to convey it to points in other states, and also the trimming of the coal in the vessels for the continuance on its interstate journey. Under these conditions, the Railroad Commission of Ohio reduced the rate on lake-cargo coal from 90 cents to 70 cents per ton, f. o. b. vessel. The Supreme Court in holding this order void as an interference with interstate commerce, uses the following language:

> "The so-called 'lake-cargo coal' is necessarily shipped beyond Huron. If it stops there, another and higher rate applies. Practically all of it is put on vessels for carriage beyond the state, usually to upper lake ports, and then, and only then, the 70 cent rate fixed by the commission applies. This 70 cent rate covers the transportation of the coal to Huron, the placing of it on board vessels, and, if necessary, trimming it for the continuance of its interstate journey."

The facts in the case now before the Commission are entirely different. In this case there is only one rate between Kennett and San Francisco. The rate established by the Commission in this case will be the sole rate on blister copper from Kennett to Oakland Long Wharf and San Francisco, and will not include any service in connection with a possible loading of the copper on any vessel or any service analogous to the trimming of the coal. While it is true that complainant has hitherto shipped its blister copper from Kennett to its refinery at Chrome, New Jersey, com-

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plainant's counsel insisted that his company was considering the possibility of shipping this copper to points in Europe. It must also be borne in mind that while there is at present no refinery for copper in San Francisco or vicinity, there is nothing in the evidence in this case to show that such refinery cannot be established there. Whatever may be the true effect of the decision of the United States Supreme Court in the *Worthington* case, that case certainly cannot go so far as to deny to a state the right to fix the rate for a movement entirely within the state between two points, both located therein. If any question can arise in connection with such an order, it will be a question as to applicability of the Commission's rate to a particular movement and not of the power of the Commission to establish such a rate. I am of the opinion that the *Worthington* case does not apply to the facts in this case and that this Commission has the undoubted jurisdiction to establish a rate on blister copper from Kennett to Oakland Long Wharf and San Francisco.

After a careful consideration of the evidence in this case proper to be considered in connection with this matter, I find that the present rate of $11.00 per ton of 2,000 pounds on copper blister actual value not to exceed $300 per ton of 2,000 pounds, carloads, from Kennett to Oakland Long Wharf and San Francisco is an unjust and unreasonable rate and that a rate of $6.90 per ton of 2,000 pounds on copper blister in anodes, pigs or bars, actual value not to exceed $400 per ton of 2,000 pounds carload minimum weight 30,000 pounds, from Kennett to Oakland Long Wharf and San Francisco would be a just and reasonable rate and that defendant should be ordered to file and publish such rate.

I submit herewith the following form of order:

ORDER.

The Mammoth Copper Mining Company of Maine having filed with this Commission its complaint against the Southern Pacific Company in the matter entitled as above, and the Southern Pacific Company having filed with this Commission its answer, and a public hearing having been held and evidence having been submitted by both parties, and the case having been submitted and careful consideration having been given to all the evidence in the case proper to be considered in this matter, and the Commission finding as a fact that the present rate of $11 per ton of 2,000 pounds on blister copper actual value not to exceed $300 per ton of 2,000 pounds, in carload lots, from Kennett to Oakland Long Wharf and San Francisco is an unjust and unreasonable rate, and that the rate of $6.90 per ton of 2,000 pounds on blister copper in anodes, pigs or bars from Kennett to Oakland Long Wharf and San Francisco, actual value not to exceed $400 per ton of 2,000 pounds carloads, minimum weight 30,000 pounds, would be a just and reasonable rate and that defendant should publish such rate,

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It is hereby ordered, that within twenty days from the service on defendant of this order, defendant shall file and publish, effective at the expiration of said period of twenty days, a rate of six dollars and ninety cents ($6.90) per ton of 2,000 pounds on blister copper in anodes, pigs or bars, actual value not to exceed $400 per ton of 2,000 pounds, carloads, minimum weight 30,000 pounds, from Kennett to Oakland Long Wharf and San Francisco, said rate to apply on state movements alone and not to include any service of defendant in loading said copper on any vessel at said Oakland Long Wharf or San Francisco or arrange said copper in said vessel for safe transportation or otherwise.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of December, 1912.

DECISION No. 370.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS OF SISKIYOU COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING A CHANGE IN THE LOCATION OF A CROSSING AT GRADE OF A PUBLIC HIGHWAY KNOWN AS SLOUGH ROAD OVER THE TRACK OF SOUTHERN PACIFIC COMPANY IN SISKIYOU COUNTY, CALIFORNIA.

Application No. 275.

Decided December 20, 1912.

F. W. Hooper, district attorney, for Board of Supervisors.
J. W. Harshaw, assistant engineer, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On October 31, 1912, Board of Supervisors of Siskiyou County, California, filed with the Commission a notice of petition for a change in the location of a public highway known as Slough Road across the track of Southern Pacific Company in said county. Said notice stated that viewers had been appointed by said board to view the proposed new crossing and report thereon as provided by law.

After due notice a hearing was held in Yreka, Siskiyou County,

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California, on December 6, 1912, at which all parties interested were duly represented. The testimony showed that the said board of supervisors desired to change the present location of Slough Road, which crosses the track of Southern Pacific Company at grade near the center of section 34, township 44 north, range 6 west, Mount Diablo meridian, to a point about one (1) mile south at the intersection of east and west quarter section line of section 3, township 43 north, range 6 west, Mount Diablo meridian, and thereafter to abandon the present crossing and close same to public use. The effect of such change will be to shorten the highway which the board must construct and maintain.

No objection was offered to the proposed change, except that one (1) witness stated that same would inconvenience him in passing to and from tracts of land owned by him on both sides of the railroad, but it was stated that these tracts were not contiguous to the railroad, and hence it is not proper to consider the objections offered in connection with this application.

In my opinion public convenience will be served by the proposed change in the crossing of Slough Road with the track of Southern Pacific Company, and the application should be granted subject to the provision that the present crossing shall be abandoned and closed to public use when the new crossing is completed. I, therefore, submit the following form of order:

ORDER.

Board of supervisors, Siskiyou County, California, having on October 31, 1912, filed with the Commission an application for an order authorizing a change in the location of the crossing of a public highway known as Slough Road across the track of Southern Pacific Company in Siskiyou County, California, from a point near the center of section 34, township 44 north, range 6 west, Mount Diablo meridian, southwardly to the intersection of the east and west quarter section line of section 3, township 43 north, range 6 west, Mount Diablo meridian, with said railway; and a hearing having been held upon the application in which all parties interested were duly represented, and a copy of the report of viewers appointed by said board of supervisors to view said proposed crossing having been filed with the Commission approving said crossing, and it further appearing to the Commission that the application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted board of supervisors, Siskiyou County, California, to change the present grade crossing of Slough Road, a public highway, with the track of Southern Pacific Company in section 34, township 44 north, range 6 west, Mount Diablo meridian to a point about one mile south at the intersection of the quarter section line of section 3, township 43 north, range 6 west, Mount

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Diablo meridian, as prayed for in the application, subject to the following conditions, to wit:

(1) The entire expense of constructing the crossing in a first-class manner for the safe and convenient use of the public shall be borne by applicant.

(2) The cost of maintaining the crossing hereafter to within two (2) feet on each side of the track of Southern Pacific Company shall be borne by applicant, and the cost of maintaining the crossing over the track, together with the fence, cattle-guards and sign posts in its vicinity shall be borne by said company.

(3) The crossing shall be constructed of a width not less than twenty-four (24) feet with grades of approach not exceeding eight (8) per cent, and shall be ballasted with first-class stone or gravel ballast to a depth of not less than six (6) inches.

(4) The granting of this application is subject to the condition that said board of supervisors shall by its order abandon and close for public use the present crossing of Slough Road over the track of Southern Pacific Company immediately after the new crossing is completed and ready for public use.

(5) The Commission reserves the right hereafter to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, public convenience and necessity demand.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of December, 1912.

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DECISION No. 371.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS OF SISKIYOU COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING A CHANGE IN THE HORNBROOK–CAMP CREEK ROAD, A PUBLIC HIGHWAY IN THE TOWN OF HORNBROOK, ACROSS THE TRACKS OF SOUTHERN PACIFIC COMPANY.

Application No. 310.

Decided December 20, 1912.

F. W. Hooper, district attorney, for the Board of Supervisors, Siskiyou County, California.

J. W. Harshaw, assistant engineer, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On December 4, 1912, the board of supervisors of Siskiyou County, California, filed with the Commission an application for an order authorizing a change in the location of the Hornbrook-Camp Creek road, a public highway which crosses the tracks of Southern Pacific Company at grade in the town of Hornbrook, California. A hearing was held on the application at Yreka, Siskiyou County, California, on December 6, 1912, at which all parties interested were duly represented.

The testimony showed in effect that the present county road, as located across the right of way of Southern Pacific Company and covered by deed or easement from said company to said county, encroached upon and included certain buildings and improvements owned by said company. It was desired and agreeable to all parties to change the present location of said public road south a distance of about thirty feet. Said company expressed a willingness to grant a new easement to said county covering the public road in its new location, and it was agreeable to the board of supervisors to relinquish the former easement.

The proposed change of the public road across the tracks of the Southern Pacific Company involves the crossing of no additional tracks. A switch, however, is brought within the limits of the crossing which the company's representative at the hearing stated would be shortly removed.

A copy of the report of the viewers appointed by said board, which approves the proposed change in said road, has been filed with the Commission.

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I therefore recommend that the application be granted and submit the following form of order:

ORDER.

Board of supervisors of Siskiyou County, California, having on December 4, 1912, filed with the Commission an application for an order authorizing a change in the location of the Hornbrook-Camp Creek road, a public highway, which crosses at grade the tracks of Southern Pacific Company in the town of Hornbrook, Siskiyou County, California, and a hearing having been held upon the application at which all parties interested were duly represented, and it appearing to the Commission that the application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted board of supervisors, Siskiyou County, California, to change the present crossing of said Hornbrook-Camp Creek road over the tracks of Southern Pacific Company, southwardly a distance of about thirty feet as prayed for in the application and as shown by the map attached thereto, subject to the following conditions, namely:

(1) The entire expense of constructing the crossings over the tracks of Southern Pacific Company, together with their maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by said company.

(2) Said crossings shall be made of a width of not less than twenty-four feet, with grades of approach of not exceeding 8 per cent, and shall be ballasted to a depth of not less than 6 inches with first-class stone or gravel ballast.

(3) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation and maintenance, and protection of said crossings as to it may seem right and proper and to revoke its permission, if, in its judgment, public convenience and necessity demand.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of December, 1912.

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DECISION NO. 372.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACKS AT GRADE ACROSS THE TRACKS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN THE CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 322.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Tidewater Southern Railway Company, a corporation, having on December 16, 1912, filed with the Commission its application for permission to construct its tracks at grade across the tracks of The Atchison, Topeka and Santa Fe Railway Company at the intersection of Taylor street with Pilgrim street in the city of Stockton, San Joaquin County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has entered into an agreement with The Atchison, Topeka and Santa Fe Railway Company whereby the permission of the latter company has been secured for constructing said tracks at grade, and that arrangements have been made that are mutually satisfactory between the companies relating to the construction, maintenance and protection of said crossing, copy of which agreement dated September 1, 1912, is attached to the application; and it further appearing that it is not reasonable nor practicable to avoid grade crossings at the point of intersection of said railways and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Tidewater Southern Railway Company to construct two (2) tracks at grade across two (2) tracks of The Atchison, Topeka and Santa Fe Railway Company at the intersection of Taylor and Pilgrim streets in the city of Stockton, San Joaquin County, California, as shown by the map attached to the application subject to the following conditions, viz:

(1) The expense of installing the crossing frogs together with the cost of their maintenance hereafter in good and safe condition shall be borne by applicant.

(2) For the protection of said crossings applicant shall on or before September 1, 1913, complete and place in operation under the authority and approval of this Commission and at its own expense a first-class

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standard interlocking device of such plan and design as shall have been approved by this Commission. After said device is completed and before it is placed in operation, upon application the Commission will inspect same and if satisfactory issue its order approving and authorizing the operation thereafter under such rules and regulations as this Commission may issue governing in such matters.

(3) The expense of maintaining and operating said interlocking device shall be divided equally between applicant and The Atchison, Topeka and Santa Fe Railway Company.

(4) After the installation of the frogs for said crossings and up to the time of said interlocking device above provided for has been completed and placed in operation under the authority of this Commission, all locomotives, trains and cars of either applicant or The Atchison, Topeka and Santa Fe Railway Company shall before proceeding over said crossings come to a full stop within fifty (50) feet thereof and shall not proceed over same until it has been ascertained that it is safe to do so and after proper signals have been given.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 373.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR AUTHORITY TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS FRENCH CAMP ROAD, A PUBLIC HIGHWAY, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 323.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Tidewater Southern Railway Company, a corporation, having on December 16, 1912, filed with the Commission an application for permission to construct a spur track at grade across French Camp Road, a public highway, San Joaquin County, California, as hereinafter

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indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid a grade crossing with said public highway, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Tidewater Southern Railway Company to construct a spur track at grade across French Camp Road, a public highway, San Joaquin County, California, to the winery of Stockton Vineyard Company, beginning at or near engineer's station 826+08, as shown by the map attached to the application, and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with its maintenance hereafter, in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Said crossing shall be of a length not less than forty-eight (48) feet, with grades of approach not exceeding six (6) per cent, and shall be ballasted with first-class gravel or sand ballast and in every way made safe for the passage of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION NO. 374.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ON QUINT STREET, CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.

Application No. 335.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having on December 23, 1912, filed with the Commission an application for permission to construct a spur track at grade on Quint street, city and county of San Francisco, California, as hereinafter indicated, and

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it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit from the board of supervisors of the city and county of San Francisco, California, and it further appearing that it is not reasonable nor practicable to avoid grade crossings with the streets intersecting said spur track on Quint street, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted The Atchison, Topeka and Santa Fe Railway Company to construct a spur track at grade on Quint street, city and county of San Francisco, California, crossing Davidson avenue, Custer avenue, and Burke avenue of said city and county, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossings, together with the cost of their maintenance hereafter, in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for said crossings, and shall ballast same with first-class stone or gravel ballast, or otherwise prepare and pave said crossings as provided in the permission granted by said city and county.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION NO. 375.

IN THE MATTER OF THE APPLICATION OF THE ROSEVILLE HOME TELEPHONE COMPANY FOR PERMISSION TO RAISE THEIR "RENTAL CHARGE ON FARMERS' LINES FROM TWENTY-FIVE CENTS PER MONTH TO FIFTY CENTS PER MONTH."

Application No. 123.

Decided December 30, 1912.

There is no reason why unreasonable burdens, due to the operating conditions of public utilities, should arbitrarily be shifted to rate payers, and it is incumbent on telephone companies to correct such difficulties in order that they may not be a factor in any alleged necessity for increased rates.

L. L. King and *G. M. Hannish,* for applicants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application is for permission to raise the monthly rental for telephone service on certain farmers' lines operated by the Roseville Home Telephone Company, Roseville, Placer County, California.

Thirteen stations are concerned in the proposed raise, involving a prospective increased revenue of $39.00 per year. The testimony discloses the fact that the Roseville Home Telephone Company is a corporation which took over the responsibilities of telephone service in and about Roseville from The Pacific Telephone and Telegraph Company. It is apparent that the system as conducted by the local company gives a more comprehensive service and is likewise more expensive in operation from the standpoint of service, plant, and equipment, with particular reference to the item of substations, than under the administration of the larger company.

If these facts only were considered, there would appear to be reason in the petition of this company for an advance of the farmer line rate now under consideration.

The Roseville Home Telephone Company is operating an exchange of approximately 139 stations, and the rate applying for the so-called farmer line service is in accord with the usual rate throughout the State, although under circumstances somewhat different than are usual. While the local conditions offer some justification for alteration in this case, it would appear that this is not the principal source of difficulty. The company has not sought relief primarily in the right direction.

There is no reason why unreasonable burdens due to the operating con-

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ditions of public utilities should arbitrarily be shifted to rate payers, and it is incumbent on the telephone companies to correct such difficulties in order that they may not be a factor in any alleged necessity for increased rates. I, therefore, recommend the following order:

ORDER.

Roseville Home Telephone Company of Roseville, Placer County, California, having applied to this Commission for permission to increase the telephone rates charged on certain so-called farmer lines served from the Roseville exchange, alleging that such increase was necessary in order that the company might receive an adequate income, and a public hearing having been held upon this application and it appearing from the evidence introduced at the hearing and from an investigation by the Commission that the difficulty which is the basis of this application is primarily traceable to operating conditions.

It is hereby ordered that the Roseville Home Telephone Company be denied permission to raise the rates as requested in the application in this proceeding.

The order of this Commission in this proceeding must not be taken as an approval of the existing farmer line rates of applicant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 376.

IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN HOME TELEPHONE COMPANY OF REDLANDS, TO RAISE TELEPHONE CHARGES.

Application No. 286.

Decided December 30, 1912.

Charles A. Rolfe, for applicant.

J. J. Prendergast, C. E. McEuen, D. A. Haslam, for telephone users.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application is for permission to raise the monthly charge for telephone service on certain specified lines out of San Jacinto to Win-

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chester, in Riverside County, California, from $1.00 per month to $1.50 per month.

The proposed change in rate is applicable to a condition entirely local. The lines involved represent an investment by the telephone company, and the company also furnishes the substation equipment, but thus far maintenance charges have been borne by the subscribers.

It is apparent to me that the $1.00 rate formerly in effect has not been a fair rate, nor is the rate requested unreasonable, considering the investment and the service rendered, and the rate requested will be reasonable under the conditions of the proposed contract submitted with this application, which will provide for a continuance of maintenance by the subscribers.

I, therefore, recommend that applicant be permitted to put into effect the rate of $1.50 per month under the terms incorporated in the proposed contract, this recommendation to be considered as applicable to the particular circumstances developed in this case. I submit, herewith, the following form of order:

ORDER.

The Southwestern Home Telephone Company, of Redlands, having applied to this Commission for permission to raise its monthly rental for telephone service on two specified circuits, extending from its San Jacinto office to the town of Winchester, in Riverside County, California, from $1.00 to $1.50 per month under terms as set out in a proposed contract accompanying their application, and it appearing from the testimony taken, together with the investigation by this Commission, that said proposed advanced rate is not unreasonable, under the circumstances involved, and a public hearing having been held on this application,

It is hereby ordered that the Southwestern Home Telephone Company, of Redlands, be and it hereby is authorized to advance, on and after January 1, 1913, the monthly charge for telephone service on the lines from San Jacinto to Winchester, Riverside County, California, from $1.00 to $1.50 per month.

The conditions under which this service is to be rendered at the advanced rate of $1.50 per month shall be substantially those as set out in the proposed contract filed with said application. It must be understood that this order applies to this particular instance and is not to be taken as a general precedent.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 377.

IN THE MATTER OF THE APPLICATION OF W. H. MOFFETT & SON OF LEMON COVE, CALIFORNIA, FOR PERMISSION TO INCREASE THE MONTHLY RATE ON LINES SIX AND SEVEN IN LEMON COVE, CALIFORNIA.

Application No. 71.

Decided December 30, 1912.

W. H. Moffett and *J. A. Moffett,* for applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by W. H. Moffett & Son, for an order of this Commission authorizing an increase in the rates charged by applicant for telephone service rendered upon two of applicant's lines, namely, No. 6 and No. 7.

The present rate on these lines is 30 cents per month and applicant desires to be permitted to charge 50 cents per month. The service upon which the increase is desired is, in all respects, similar to what is commonly defined Farmer Line Service. The duties and responsibilities of building and maintaining lines are divided between the telephone company and the subscribers. This is a class of service which is frequently more or less unsatisfactory because of this divided responsibility, but, on the other hand, it is a class of service frequently available in rural communities which cannot develop a different class of service. A rate of 50 cents per month is not an unreasonable charge under the circumstances existing at Lemon Cove, as the duties involved in this particular service are essentially those of central office switching combined with the partial responsibility for line maintenance. Evidence was produced at the hearing which showed that the existing charge of 30 cents for this service is not compensatory under the conditions existing at Lemon Cove, and while the increase requested is small, it will be a material and actual factor in maintaining this telephone system on a compensatory basis. It was neither alleged nor indicated by the evidence introduced, that the charge of 50 cents elsewhere obtaining upon this system for similar service was not fair and equitable in view of the duties and responsibilities involved. Under these circumstances, I recommend that applicant be allowed to put the increased rate into effect.

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I submit herewith the following form of order:

ORDER.

W. H. Moffett & Son having applied to this Commission for an order permitting applicant to put into effect a rate of 50 cents per month, payable in advance, for the service rendered on Farmer Lines No. 6 and No. 7, in order that the rate charged by applicant for this class of service may be uniform and compensatory, and a public hearing having been duly held upon this application,

It is hereby ordered that W. H. Moffett & Son be, and it hereby is, authorized to put into effect on and after January 1, 1913, a rate of 50 cents per month, payable in advance, for service rendered on Farmer Lines No. 6 and No. 7.

The authority herein granted must not be taken as a final approval of the rates authorized, inasmuch as the same may at any time be affected by further orders of this Commission having to do with the class of service involved.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 378.

IN THE MATTER OF THE APPLICATION OF EEL RIVER AND SOUTHERN TELEPHONE COMPANY, OF FERNDALE, HUMBOLDT COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING THE FILING, PUBLICATION AND APPLICATION OF CERTAIN TELEPHONE RATES IN LIEU OF THE RATES FILED WITH THE RAILROAD COMMISSION ON APRIL 10, 1912, AND THE SUPPLEMENTS THERETO FILED ON MAY 2, 1912, AND JUNE 20, 1912.

Application No. 184.

Decided December 30, 1912.

A. W. Blackburn, for applicants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application is "for an order authorizing the filing, publication and application of certain telephone rates in lieu of the rates filed with

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the Railroad Commission on April 10, 1912, and the supplements thereto filed on May 21, 1912, and June 20, 1912."

In effect the granting of this application would be the application of the uniform schedule of rates which this company asserts is, and seeks to have recognized as, the standard rates covering their service. In so far as the effectiveness of the so-called standard rates, constituting the rates filed on April 10, 1912, with this Commission, is concerned they are in full force and effect as far as they were actually applied on October 10, 1912. Following the precedent already established by this Commission, they are recognized as the rates applicable in the case of new business and in the case of such subscribers as may change their location and thereby place themselves in the attitude of new subscribers.

Such rates as were in effect on October 10, 1911, as may diverge from these so-called standards are fully provided for by this Commission's General Order No. 15, and the present application is in effect a petition for permission to arbitrarily apply to these the standard schedules referred to.

The evidence discloses that the Eel River and Southern Telephone Company is operating a plant bought from The Pacific Telephone and Telegraph Company, and is operating in a field by virtue of contract relations with The Pacific Telephone and Telegraph Company, and that such purchase was made and such contract entered into without any adequate distinction being made as to certain existing equities in the plant concerned. It was unquestionably demonstrated that many of the conditions, based upon former investments made by individuals in plant now being used to render the service involved, invalidated this company's claim to the right of generally applying their so-called standard rates, in lieu of rates as they existed on October 10, 1911.

I submit herewith the following form of order:

ORDER.

The Eel River and Southern Telephone Company, of Ferndale, Humboldt County, California, having made application "for an order authorizing the filing, publication and application of certain telephone rates in lieu of the rates filed with the Railroad Commission on April 10, 1912, and the supplements thereto filed on May 21, 1912, and June 20, 1912," and a public hearing having been held thereon,

It is hereby ordered that the application of the Eel River and Southern Telephone Company be and the same hereby is denied, and that applicant be and it hereby is directed to continue, until the further order of this Commission, in full force and effect such rates as were in effect on October 10, 1911, for the several classes of telephone service involved.

And be it further ordered that for new business, or such business as

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may be so regarded by virtue of a new location on the part of existing subscribers, the Eel River and Southern Telephone Company shall apply the rates heretofore filed with this Commission on April 10, 1912, constituting its so-called standard rates for the several classes of service involved.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 379.

IN THE MATTER OF THE APPLICATION OF E. W. CROSBY, DOING BUSINESS UNDER THE NAME OF REEDLEY TELEPHONE COMPANY, FOR PERMISSION TO ADJUST TELEPHONE RATES.

Application No. 171.

Decided December 30, 1912.

An adjustment of exchange rates schedule, so as to raise rates to a few subscribers, held not justified upon the allegation that the deviations to such subscribers is a source of annoyance, said deviations not constituting unjust discrimination. Upon application to adjust rates on farmers' line, *held* that investment by the subscribers in the line is not a good reason for continuing deviations from the standard rate the reasonableness of which has not been questioned.

E. W. Crosby, for applicant.
R. M. Reid, J. H. Duff, J. J. Kolb, E. K. Smith, O. D. Lyon, protestants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by E. W. Crosby for permission to adjust telephone rates upon the system which he is conducting under the name of the Reedley Telephone Company. The proposed adjustment involves an increase of rates on two separate classes of service, namely, exchange service and farmer line service. I will consider these two services separately.

The adjustment of rates requested will result in raising the rate now collected from six exchange subscribers. The general question of the reasonableness of the existing exchange rates is not raised nor considered in this application. The application merely alleges that the deviation

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from the standard rates involved in these six instances are a source of annoyance. I am of the opinion, however, that this of itself is not an adequate reason for altering the rate. Upon an investigation into these deviations from the standpoint of discrimination and adequacy of revenue certain difficulties are encountered which make a favorable recommendation upon this portion of the application inadvisable.

Evidence introduced at the hearing disclosed the fact that various individuals had contributed to the investment of this telephone system and the evidence indicated that some of the present subscribers had equities in the lines over which they were obtaining service. When Mr. E. W. Crosby purchased the property now being operated under the name of the Reedley Telephone Company no detailed inventory of this property was furnished which could be used to segregate the interests in the system which may be privately owned.

In view of these uncertainties and the inadequacy of information upon which to determine the equities in the lines involved, I find that the existing discrepancies in rates are not necessarily indicative of discrimination, and that such inconvenience as Mr. E. W. Crosby alleges is caused from these discrepancies is insignificant and negligible. Discrimination is not established for the same reason. I recommend, therefore, that the Reedley Telephone Company be required to continue this service under the existing rates throughout the natural life of the existing lines, or until such time as the equities in the investment involved can be definitely determined. When the time arrives that these lines must be rebuilt the present difficulties which prevent the application of standard rates at this time will have been eliminated, and the standard rate for the classes of service involved will necessarily apply and the situation complained of will reach a natural and equitable solution.

Considering now the other class of service upon which E. W. Crosby desires to adjust his rates, that is, the so-called farmer line service, the evidence disclosed that the adjustment applied for will raise the rate from 25 cents to 30 cents per month for about 63 subscribers.

The application alleges that the standard rate charged this class of service for an exchange the size of the exchange at Reedley is $3.60 per year. No objection was made to the reasonableness of this rate and the question of the reasonableness of this rate is not passed upon in this application, which is directed solely to the question of whether the existing deviations from this rate are justified and should be continued or whether applicant should be permitted to apply the standard rate to all of the subscribers upon the farmer lines. While the same situation of indefinite ownership is present in the farmer lines as it is in the exchange lines, this fact does not present difficulties when the rates for farmer line service are considered. The reason for this is that the rate for farmer line service contemplates an investment by the sub-

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scribers. If the telephone company is willing to apply the rate whether or not it owns the line and if the rate is reasonable in case the subscriber does own the line, it would then appear that there is no good reason for continuing deviations from the standard rate, the reasonableness of which has not been questioned. I find, therefore, that applicant is justified in applying the standard rate of $3.60 per year in the case of the deviations complained of, and I recommend that this portion of the application be granted.

I submit herewith the following form of order:

ORDER.

E. W. Crosby, doing business under the name of the Reedley Telephone Company at Reedley, Fresno County, California, having applied to this Commission for an order authorizing an adjustment of telephone rates charged by applicant for both exchange and farmer line service, and a public hearing having been duly held upon this application, and the Commission being of the opinion that while applicant has justified the requests for an adjustment in the rates for farmer line service, applicant has failed to make out his case in regard to exchange service:

It is hereby ordered that E. W. Crosby, doing business under the name of the Reedley Telephone Company, be and he hereby is denied permission to put into effect those certain adjustments involved in the application in this proceeding as far as such adjustments apply to rates for service within the exchange radius of the Reedley exchange.

Be it further ordered that E. W. Crosby, doing business under the name of the Reedley Telephone Company, be and he hereby is granted permission to put into effect on and after January 1, 1913, those certain adjustments requested in the application in this proceeding as far as such adjustments apply to so-called farmer line service and that for such service applicant be permitted to apply generally the standard rate therefor now filed with this Commission and to eliminate existing deviations therefrom on the basis of the rates now on file, this permission being applicable to service beyond the exchange radius of the Reedley exchange.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 380.

IN THE MATTER OF THE APPLICATION OF COAST COUNTIES GAS AND ELECTRIC COMPANY FOR PERMISSION TO BUY AND OF THE GILROY GAS WORKS FOR PERMISSION TO SELL ALL THE PROPERTY OWNED BY THE GILROY GAS WORKS.

Application No. 326.

Decided December 30, 1912.

One company owning all the capital stock of another company engaged in furnishing a like service, permission to merge given, a nominal value being placed on the property transferred.

W. W. Kaufmann and *S. W. Coleman,* for Coast Counties Gas and Electric Company.

Walter G. Fitzgerald, city attorney, for City of Gilroy.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by the Coast Counties Gas and Electric Company for permission to buy and the Gilroy Gas Works for permission to sell, all the property now owned by the Gilroy Gas Works.

This Commission has already, by its order in application No. 142, granted permission to the Coast Counties Gas and Electric Company to purchase all the capital stock of Gilroy Gas Works, and this transfer has now been consummated. As was stated in the opinion in application No. 142, the Coast Counties Gas and Electric Company is engaged in the business of supplying gas and electrical energy for light, heat and power in portions of the counties of Santa Cruz, Monterey, San Benito, and Santa Clara. It is at present operating the municipal electric plant of the city of Gilroy under a lease from the city. The company now desires to also operate the municipal gas plant. On April 17, 1909, the city entered into a contract with L. P. Lowe, leasing to said Lowe the municipal gas plant for a period of ten years. Lowe agreed to make certain additions and improvements to the gas plant, the city reserving the right to purchase upon the termination of the lease at a price to be agreed upon, or settle by arbitration, the additions, extensions and improvements made to the municipal plant. Mr. Lowe formed the Gilroy Gas Works and assigned to it this ten-year lease of the municipal plant. In order to consolidate the management of the electric lighting plant and the gas plant this Commission permitted the

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Coast Counties Gas and Electric Company to purchase, for $25,000, all the capital stock of the Gilroy Gas Works. The Commission, however, permitted this transfer only upon the express condition that the consideration of $25,000 should not be taken for rate fixing or other purposes as representing the value of the additions, extensions, and improvements, and particularly should not be used against the city as representing the value of such additions, extensions and improvements in case the city desired to purchase the same.

The Coast Counties Gas and Electric Company now desires to purchase for $25,000, the property of all kinds now owned by the Gilroy Gas Works. No inventory has been made of the property of the Gilroy Gas Works, which consists chiefly of the additions, extensions and improvements which have been made, construction material on hand, furniture, tools and other personal property. As soon as this transfer, if permitted, is consummated, the Gilroy Gas Works is to be dissolved. Whatever consideration, therefore, is given for this property will upon the dissolution of the Gilroy Gas Works, immediately revert to the Coast Counties Gas and Electric Company which holds all the stock of the Gilroy Gas Works. The amount of the consideration, therefore, is of little consequence. In order, however, to obviate the possibility of the proposed consideration of $25,000 in any way being taken as indicative of the value of the property, I suggested to applicants that they amend their application in order to make provision merely for a nominal consideration of $5.00. Applicants adopted this suggestion and amended their application accordingly. Mr. Walter G. Fitzgerald, the city attorney of Gilroy, represented the city of Gilroy at the hearing. He stated that the city had no objection to the granting of this application, provided, the order included conditions which would preclude the Coast Counties Gas and Electric Company from later using against the city, the amount of the consideration heretofore paid for all the capital stock of the Gilroy Gas Works as representing the value of the property of the Gilroy Gas Works. I believe that as far as possible the management and the ownership of these gas works should be consolidated.

I recommend that the application be granted, subject to the conditions in the order specified, and submit herewith the following form of order:

ORDER.

Coast Counties Gas and Electric Company and Gilroy Gas Works having applied to this Commission for an order permitting Coast Counties Gas and Electric Company to buy all the property of Gilroy Gas Works for the nominal consideration of $5.00, and a public hearing having been held upon this application and the city of Gilroy appearing and consenting that said application be granted subject to the con-

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ditions hereinafter specified, and it appearing that public convenience and necessity will be subserved by the granting of this application,

It is hereby ordered that Coast Counties Gas and Electric Company be and it hereby is authorizzed to buy, and that Gilroy Gas Works be and it hereby is authorized to sell for the consideration of $5.00 all the property of whatever kind, both real and personal, now owned by said Gilroy Gas Works, upon the following conditions and not otherwise, to wit:

The consideration of $25,000, heretofore paid by Coast Counties Gas and Electric Company for all the capital stock of Gilroy Gas Works shall not be used before this Commission, or any other public authority, as representing for rate fixing, or for any other purposes, the present value of the property of Gilroy Gas Works, or as bearing any necessary relation thereto, and particularly this amount shall not be used against the city of Gilroy for any possible purchase of said property by the city.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 381.

IN THE MATTER OF THE APPLICATION OF THE RAYMOND TELEPHONE COMPANY FOR PERMISSION TO RAISE TELEPHONE RATES FOR TELEPHONE SERVICE ON THE LINES OF SAID COMPANY BETWEEN RAYMOND AND THE PINES VIA COARSE GOLD AND FRESNO FLATS, IN MADERA COUNTY, CALIFORNIA.

Application No. 89.

Decided December 30, 1912.

A. C. Shaw, for the Raymond Telephone Company.

This application is for permission to raise the rates for telephone service on the telephone lines of applicant between Raymond and The Pines via Coarse Gold and Fresno Flats, in Madera County, California.

It appears from the testimony introduced at the hearing that these lines and the service involved are intimately associated with a mercantile business in which the applicant in this case is materially interested, and the accounts of this public utility are so intimately involved with the accounts of the mercantile enterprise referred to that applicant was

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unable to segregate the accounts of the one and the other. From other evidence submitted to this Commission, it is apparent that this application is not made free of interests and considerations intimately involving a business and an enterprise entirely foreign to the scope and jurisdiction of the Commission, and for these reasons I recommend that the application be dismissed.

It appears that certain variations in rates exist which this application sought to eliminate. I recommend, however, that the telephone service rendered by The Raymond Telephone Company be continued on the basis of General Order No. 15, authorizing the continuance of rates on the basis of October 10, 1911, until the further order of this Commission, and that The Raymond Telephone Company be required to so separate and segregate the interests of this telephone company from the interests of the mercantile business as to be prepared to bring this situation again before the Commission at a later date to the end that existing variations in rates may eventually be eliminated.

I therefore recommend the following order:

ORDER.

The Raymond Telephone Company of Raymond, Madera County, California, having made application to increase telephone rates on the lines of said company between Raymond and The Pines via Coarse Gold and Fresno Flats, Madera County, and it appearing further that the accounts and interests of said telephone company are intimately involved with the accounts and interests of an enterprise that ought to be entirely foreign thereto,

It is hereby ordered that The Raymond Telephone Company be, and it hereby is, denied permission to increase rates as requested in the application in this proceeding.

It is further ordered that The Raymond Telephone Company be, and it hereby is, directed to continue rendering telephone service at such rates and under such conditions as prevailed on October 10, 1911, in accordance with this Commission's General Order No. 15 until the further order of this Commission.

It is further ordered that The Raymond Telephone Company be, and it hereby is, directed to proceed to so segregate the accounts and the interests directly attributable to the service given by The Raymond Telephone Company that the telephone situation may be presented at a date not later than six months from the date hereof, on a basis free from interests and considerations that are foreign thereto.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 382.

THE TOWN OF WILLITS
vs.
WILLITS WATER AND POWER COMPANY.

Case No. 297.

Decided December 30, 1912.

At the hearing, this matter, by reason of stipulation of the parties as to the reasonable gross revenue of respondent, resolved itself to questions of discrimination only. Amounts of water used by city and by industrial and domestic consumers inquired into and adjustments of rates ordered, such adjustments being in consideration of the gross revenue entitled to be earned by respondent as agreed upon.

Con. H. Goldberg, City Attorney, for complainant.
Lilienthal, McKinstry & Raymond and *Mannon & Mannon,* for defendants.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

On the tenth day of June, 1912, at an election duly held, the complainant herein, a municipal corporation of the sixth class, surrendered all of its powers with which it was then vested to the Railroad Commission under the provision of the statutes of this State providing therefor, and on the fifteenth day of August this complaint was filed, attacking the reasonableness of the rates of the defendant water company, on the grounds both of their excessive and discriminatory character. The case was first heard on October 10th and 11th, and thereafter continued so that certain observations concerning the supply might be made, and the final hearing held November 13, 1912.

The case was much simplified by the practical agreement between the parties that the gross revenue of $8,127, secured by the company during the last succeeding year was not an excessive amount for the service performed. This makes it unnecessary for the Commissioner to go into various matters of valuation and operating expenses, which would be necessary if the revenue itself were attacked, and makes it only necessary to determine the questions of discrimination alleged in the complaint and made the subject of evidence in the case.

The city suggests that a measured service should be required, which would necessitate the installation of meters. I am of the opinion that where a measured service is possible without too largely increasing the capital account of the utility, that it should be required in those instances where it is necessary to conserve the supply. In the northern

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sections of the State, where the rain is more abundant and the necessity for careful conservation of the supply of water is not so great as in southern California, I think we should be slow in ordering the installation of meters, which, if required, would entitle the company to increase its capital account to the extent of the added outlay if the installation of such meters is made, as I think ordinarily it should be, at the expense of the company. On such added capital account, of course, the utility will have a right to an earning. In the case before us I believe it would necessitate an actual added cost to the consumers without a corresponding added benefit if meters were required to be installed. This question, however, will always be open for determination, and when a need is shown justifying the added expense, the Commission will pass upon the matter.

The main question, as I have said, being not the total amount of revenue but the proper distribution thereof, this Commission directed its engineering department to make an investigation to determine the amount of water used by the various classes of service in the town of Willits, and at the adjourned hearing on November 13th, Mr. Harroun, of the engineering department, testified very fully with reference thereto. It was found that the average daily consumption amounts to about 255,000 gallons. On this basis the consumption under the various classes would be as follows:

	Average daily consumption, gallons.	Per cent of total.
Northwestern Pacific Railway Company	32,000	12.55
Northwestern Redwood Company	6,200	2.43
Irvin-Muir Company	1,180	0.46
Town street sprinkling	7,000	2.74
Town sewer flushing	12,550	4.92
Domestic service	196,070	76.90
Total	255,000	100.00

The amount of water used for fire service is practically negligible, during the year 1911 and 1912, none having been used so far as can be ascertained. Yet, it is well established that where fire protection is rendered to a community the initial expenditure required for the installation of this service is proportionately large. Our engineering department reports that in this particular case the facilities made necessary for fire protection purposes represent about 10 per cent of the entire cost of the system. Subdividing the service rendered and the

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rates received during the year 1911 by the Willits Water and Power Company, we have the following:

Municipal.		
Fire service	$600 00	
Sewer flushing	78 00	
Street sprinkling	280 00	
		$958 00
Industrial.		
Northwestern Pacific Railway Company	$264 00	
Northwestern Redwood Company	132 00	
Irvin-Muir Company	72 00	
		468 00
Domestic		6,242 00
Total of above classes		$7,668 00

If it be accepted that the rate paid for each service be measured by the amount of consumption of each service, and in the case of fire service, where the consumption is negligible, that the measure of this service rate be based upon the investment required and cost to render such service, then the following tabulation shows the per cent used, present rate and indicated rate, on the basis herein suggested:

	Per cent used.	Present rate.	Rate based as indicated.
Class.			
Municipal—			
Fire service	0.00	$600 00	$767 00
Street sprinkling	2.74	280 00	189 00
Sewer flushing	4.92	78 00	340 00
Industrial—			
Northwestern Pacific Railway Company	12.55	264 00	866 00
Northwestern Redwood Company	2.43	132 00	168 00
Irvin-Muir Company	0.46	72 00	32 00
Domestic	76.90	6,242 00	5,306 00
Total above classes	100.00	$7,668 00	$7,668 00

On this basis it appears that the city has largely discriminated in favor of itself as against the consumers in all other classes, while the company has discriminated in favor of the industrial interests, thus leaving the small consumer to bear the burden of the discrimination.

In the industrial class, the most striking discrimination is that in favor of the Northwestern Pacific Railway Company. The proportionate amount which this consumer should pay, based on quantity, is $866 per annum. In the service of water, as well as other commodities, there is usually a less proportionate cost in furnishing to one large consumer than in distributing an equal amount among many small consumers. Therefore, having regard to the cost of service, wholesale rates can, and properly should be accorded. It is often very hard, however, to determine just what concession should be given to those who use large quantities of a commodity, but in the present case I believe that a

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rate of $600 per annum would be, under all the circumstances, fair to the Northwestern Pacific Railway Company. For the same reason, the large item of $340 for sewer flushing may be reduced to $236, thus giving both to the city and to the Northwestern Pacific Railway Company a wholesale rate of about 70 per cent.

I have had in mind in the Northwestern Pacific case the fact that a limiting rate might be reached beyond which it would pay that company to provide its own supply of water. As I have already said, it is hard to determine just when a consumer leaves the retail and goes into the wholesale class, but when a consumer uses a sufficient amount of a commodity to entitle it to a wholesale rate, then the reduction from the rate which the quantity of a commodity otherwise would require, must have reference to and be justified by the less proportionate cost of furnishing the larger supply to the one consumer, with a limiting rate which is the highest amount which this wholesale consumer can be forced to pay and be retained as a customer. In other words, a large user of a commodity should have that proportionate deduction which the decreased cost of furnishing the commodity to it entitles it, and this rate should be fixed unless it passes the limiting rate already discussed.

Examining into the question of rate discrimination among domestic consumers, the following conditions are found:

Consumer.	Present rate collected.	Rate based on ordinance.
Larsen, Corner State and Huron	$3 15	$4 10
H. Bowan	2 60	3 60
Mrs. M. E. Rowe (boarding)	2 65	5 60
W. A. S. Foster, Com. near Main		3 75
Mercantile Building	6 00	9 50
Bowen, livery stable	6 00	6 75
Hotel Willits	21 50	84 75
Hotel Central	13 85	30 45
A. J. Fairbanks	3 60	3 45
Gordon Baechtel	2 45	3 65
D. L. Sawyers	3 45	3 85
C. A. Irvin	3 45	3 60
Irvin-Muir Lumber Company	3 25	3 50
McMurray & Company	2 40	2 85
Mrs. N. M. Vincent	1 00	2 00
Eugene McPeak (boarding)	3 10	6 20
G. B. Willits	2 50	3 45
G. W. Upp	3 50	4 85
A. Davidson	3 60	3 45
W. F. Saxon	3 35	3 85
G. A. Smart	3 10	3 45
Bank of Willits	1.50	2 35
R. G. Dryden (livery stable)	10 50	8 50
A. Davidson (Ed Brown)	2 70	3 75
Northwestern Redwood Company lodging house	2 70	6 15
Northwestern Pacific Railway Company depot and dwelling	None	9 70
Totals	$111 90	$227 10

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The above tabulation shows that in three instances the rates charged have been too high and that this excess charge amounts to $2.30 per month. In all other cases, the rates charged have been below that which the ordinance requires and the aggregate amount is $115.20 per month.

Attention is called to the rates which would be charged under the ordinance to boarding and lodging houses and hotels. In the case of the Hotel Willits and Hotel Central, these rates are $84.75 and $30.45 per month, respectively. I believe these rates are higher than they should be, and I have the same to say with reference to the three instances covering boarding houses and lodging houses, and also for the Northwestern Pacific depot. For the reason that I have already given in discussing the limiting rate herein, I believe a special rate might be adopted to advantage in these cases, and I suggest a rate of $5 per month for the Northwestern Pacific depot, and that the present rates that are charged to the Hotel Willits, the Hotel Central, and in the three instances covering boarding and lodging houses, be maintained. Making this adjustment and applying the ordinance rate in the other instances of domestic consumers where discriminations are found, we will get from this group $137.75 per month instead of $111.90 as at present.

The rates collected from the domestic consumption class were, in 1911, $6,242. If the above adjustment had been made in that year we would have had instead $6,552, or $310 in addition. If the various classes of rates be adjusted in accordance with the preceding suggestions, the income from all classes, excluding domestic service, would have been $2,555, thus requiring $5,572 to be secured from domestic service in order to produce the required revenue of $8,127. It is, therefore, evident that the domestic rate may be reduced $980, or about 15 per cent per annum and still permit the water company to receive the same gross income.

If the domestic rate is reduced 12 per cent, there will be on the basis herein prescribed an excess of $90 over the gross revenue from the year taken as a basis. I am aware that mistakes in computations may be made, but I know the computations made herein have been made with great care by our engineering department and are reasonably accurate.

On the assumption that the water company is justly treated if it receives the gross revenue herein agreed upon, we have a margin in its favor, after making this reduction in the domestic rates and these adjustments in the other rate, of $90.

Except in the cases specifically referred to, I recommend that the ordinance of the town of Willits, being Ordinance No. 116, be the basis for the rates to be charged by the Willits Water and Power Com-

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pany, and the rates provided therein for sundries and all services upon which no specific finding is made, be established as just and reasonable rates. I further recommend that for the domestic service the basis prescribed in Ordinance No. 116 of the town of Willits be adopted, but that in each specific instance there be a 12 per cent reduction from the charge which might be imposed under said ordinance.

As has already been stated, this decision is based upon the stipulation of the company in which there is satisfactory evidence of concurrence on the part of the city in the record that the gross revenue for the year 1911 is a proper revenue for the company. At any future proceeding either on behalf of the city or the company wherein this stipulation is not made, the Commission, of course, will go fully into the matter of what the revenue should be with a view to determining whether it is so high that it is unjust to the consumer, or so low that it is unjust to the company.

As to all other cases, the rates set down in the order hereto, I recommend be adopted.

I therefore recommend the following order:

ORDER.

The town of Willits, a municipal corporation of the sixth class, having, on the tenth day of June, 1912, duly surrendered, as prescribed by law, its powers over public utilities, and particularly over water corporations, and the Willits Water and Power Company, being a water corporation as defined in the Public Utilities Act of this State, and the town of Willits having filed its complaint, No. 297, on the 15th day of August, 1912, attacking the rates of said Willits Water and Power Company and said Willits Water and Power Company having answered complaint, and a hearing having been duly held and being fully advised in the premises, the Commission finds as a fact that the following rates of charges for services performed, and to be performed, in behalf of the town of Willits and the inhabitants thereof and the consumers therein, are just and reasonable charges to be made by the said Willits Water and Power Company:

1. For fire service to the town of Willits, $767 per annum.
2. For street sprinkling for the town of Willits, $189 per annum.
3. For sewer flushing for the town of Willits, $236 per annum.
4. For water furnished to the Northwestern Pacific Railway Company for service, other than depot service, and within the town of Willits, $600 per annum.
5. For water furnished the Northwestern Redwood Company, $168 per annum.
6. For water furnished to the Irvin-Muir Company, $32 per annum.
7. For water furnished to the Hotel Willits, $21.50 per month.

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8. For water furnished to the Hotel Central, $13.85 per month.

9. For water furnished to the boarding house of Mrs. M. E. Rowe, $2.65 per month.

10. For water furnished Eugene McPeak, boarding house, $3.10 per month.

11. For water furnished Northwestern Redwood Lodging House, $2.70 per month.

12. For water furnished to Northwestern Pacific Railway Company Depot, $5.00 per month.

13. For water furnished to the individual domestic consumers, the rate prescribed in Ordinance No. 116, less 12 per cent.

14. For all other consumers and sundry purposes and outside service, the ordinance rate without any reduction.

And the Commission further finds as a fact that all the rates for which the herein prescribed rates are substituted are unjust and unreasonable rates, either to the consumer by reason of being too high, or to the company by reason of being too low; and

It is hereby ordered that the herein prescribed rates be, and the same hereby are prescribed and fixed as just and reasonable rates to be charged by the Willits Water and Power Company for services performed by said company within the town of Willits.

The rates prescribed herein shall become effective and be in force on or before January 10, 1913. If the company for convenience desires to put them in effect on January 1, 1913, it will be permitted so to do, but this order, of course, will allow the company statutory time within which to make them effective.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 383.

IN THE MATTER OF THE APPLICATION OF MILLER & LUX, INCORPORATED, AND WEST SAN JOAQUIN VALLEY WATER COMPANY FOR ORDER AUTHORIZING TRANSFER OF PROPERTY AND ISSUE OF CAPITAL STOCK THEREFOR.

Application No. 247.

Decided December 30, 1912.

Applicant being engaged mainly in commercial business is permitted to transfer to a separate corporation its water plant and system under certain restrictions imposed in the order. Inasmuch as this is in practical effect a *pro forma* transfer without any actual change of ownership, the agreed value becomes immaterial, such value, however, not to be accepted for rate fixing or for any other purposes.

Edward F. Treadwell and *L. J. Kennedy*, for applicants.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

Miller & Lux, one of the applicants herein, is a corporation empowered to transact business of a varied nature including which it may construct and maintain dams and other water facilities and distribute water for irrigation and other purposes.

This company laid out the town sites of Firebaugh, Dos Palos, Los Banos, and Gustine, and in connection therewith has installed certain systems for the distribution and sale of water for household and domestic purposes. It is urged that this water business is only incidental to the main business of the company, and for convenience in operation as well as bookkeeping it may be allowed to transfer all of the property to the second petitioner, West San Joaquin Valley Water Company, which is a corporation organized and existing under and by virtue of the laws of the State of California, and fully empowered under its articles to go into this business. The second company is admittedly a creature of Miller & Lux and will be entirely controlled by that company if this application is granted.

In pursuance of the plan the petitioners on the 28th day of September, 1912, entered into an agreement wherein it was agreed that Miller & Lux should transfer to the West San Joaquin Valley Water Company the Firebaugh water system, Dos Palos water system, South Dos Palos water system, Los Banos water system, and Gustine water system at an agreed value of $55,000, and the West San Joaquin Valley Water Company agreed to issue and turn over to Miller & Lux in

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return for said property 5,000 shares of its stock, which is the entire stock of said company.

The applicants herein desire authority first, for the transfer, and second for the issue of the 5,000 shares of stock.

Apparently the two main questions involved of importance to the public are, first, whether or not the purchasing company shall be in as good a position to deliver the water as the seller, and, second, whether or not this may be done by the purchaser at as little cost as the same service may be performed by the seller.

Miller & Lux secures its present supply of water from the San Joaquin and Kings River Canal and Irrigation Company, and that Company addresses the following communication to this Commission, and the same is filed in the records of the case:

"*To the Honorable the Railroad Commission of the State of California*:

"The San Joaquin and Kings River Canal and Irrigation Company, Incorporated, is a corporation engaged in the sale, rental and distribution of water in the counties of Fresno, Merced and Stanislaus, in the State of California, and has heretofore sold certain water to Miller & Lux, Incorporated, which has been heretofore sold and distributed by Miller & Lux, Incorporated, to the inhabitants of certain towns in those counties for domestic purposes. The rates at which this company is entitled to sell water for domestic purposes has never been fixed by any authority and the price at which the said water has been sold to Miller & Lux, Incorporated, has been fixed by this company.

"It is now proposed by Miller & Lux, Incorporated, to sell and transfer its distribution plants in the towns mentioned to a corporation known as the West San Joaquin Valley Water Company, and in case of such transfer The San Joaquin and Kings River Canal and Irrigation Company, Incorporated, will continue to furnish water to the West San Joaquin Valley Water Company at the same prices and on the same terms upon which it has heretofore been sold to Miller & Lux, Incorporated; or in case the rates should hereafter be fixed by some competent authority at which this company may sell such water, then the same will be furnished to such company at the rate so established.

Respectfully submitted,

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, Incorporated.
By J. LEROY NICKEL,
Vice-President.
By C. Z. MERRITT,
Secretary.

Dated December 4th, 1912."

I think the compliance with this stipulation will be all that is necessary to insure that the purchasing company stands in as good a position with reference to ability to secure water as does the seller.

It is admitted that the employees of Miller & Lux, who devote their time to this water business are also engaged in other work of the company, and this brings about an economical management of these small plants which could not be brought about under an independent ownership. I think this same arrangement should be carried on under the new ownership if this application is granted, and the fact that Miller & Lux is to own all of the stock of the purchasing company makes it possible for it to see that such economical arrangement is continued.

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The value of the property is agreed to be $55,000. Inasmuch as this is in practical effect a *pro formâ* transfer without any actual change of ownership the agreed value becomes immaterial; instead of owning the property as Miller & Lux now does, it will own all of the stock of a corporation which will own the property. The Commission should not accept for rate fixing or for any other purposes the value here agreed upon, but a finding as to value is unnecessary under the circumstances of this case.

The real reason which actuates Miller & Lux to desire to make this arrangement is that it does not desire to have its merchandise accounts kept in the form that it is required to keep its water accounts under the accounting order of this Commission, and believing that we should always have regard to the convenience of the utility, provided that by so doing we do no injustice to the public, I believe that this utility should be allowed to divide this purely water business from its other business on the ground of convenience alone, if such division does not bring about poorer or more expensive service to the consumers. Under the restrictions which should be imposed in the order, I believe this can be brought about, and I recommend the following form of order:

ORDER.

Miller & Lux, Incorporated, having applied to sell and the West San Joaquin Valley Water Company having applied to purchase certain described property set out in said application and designated Firebaugh water system, Dos Palos water system, South Dos Palos water system, Los Banos water system, and Gustine water system, the several items of which systems are set out in the application and referred to for particulars, the agreed price for which property to be all of the 5,000 shares of stock of the West San Joaquin Valley Water Company, and the West San Joaquin Valley Water Company having asked to issue 4,997 shares of its capital stock now unissued; and notice having been regularly published, proof of which publication is on file with this Commission, and a hearing having been held and no one appearing in opposition to the granting of said application, and the Commission being fully advised in the premises:

The Commission hereby finds as a fact that public convenience and necessity will be served by—

1. The granting of the application of Miller & Lux, Incorporated, to sell all the above referred to property to the West San Joaquin Valley Water Company;

2. The granting of the application of the West San Joaquin Valley Water Company to buy all of said property;

3. The granting of the application of the West San Joaquin Valley Water Company to issue 4,997 shares of its capital stock and turn over

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the same to the said Miller & Lux, Incorporated, in payment for said property.

And it is hereby ordered that permission to sell such property by Miller & Lux and permission to buy the same by the West San Joaquin Valley Water Company, and permission to issue 4,997 shares of the capital stock of said West San Joaquin Valley Water Company is granted; such permission being granted, however, under the express understanding on the part of this Commission that the said Miller & Lux, so long as it shall own or control, directly or indirectly, a majority in amount of the shares of the said West San Joaquin Valley Water Company, will endeavor to further and bring about as economical a management of the property hereby authorized to be transferred to the West San Joaquin Valley Water Company as is possible by the joint use of the employees of said Miller & Lux and said West San Joaquin Valley Water Company. And on the further understanding on the part of this Commission that said Miller & Lux, Incorporated, so long as it shall directly or indirectly control a majority in number of the shares of the stock of the San Joaquin and Kings River Canal and Irrigation Company will require compliance by the said San Joaquin and Kings River Canal and Irrigation Company with the stipulation filed herein and incorporated in the opinion in this case.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 384.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACKS AT GRADE ACROSS THE TRACKS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AT THE INTERSECTION OF PILGRIM AND TAYLOR STREETS IN THE CITY OF STOCKTON.

Application No. 94.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Applicant in the above entitled proceeding having on December 22, 1912, made written request to this Commission that the above entitled application be dismissed,

It is hereby ordered that the application in the above entitled proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 385.

IN THE MATTER OF THE PETITION OF THE METROPOLITAN WAREHOUSE COMPANY AND VARIOUS OTHER WAREHOUSES TO INCREASE THEIR RATES FOR STORING AND HANDLING COMMODITIES.

Applications Nos. 16 to 25 inclusive, Nos. 28, 121 and 125.

Decided December 30, 1912.

Donald Y. Campbell, for Atkins and Kroll.
C. W. Durbrow, for applicants.
Seth Mann, for protestants.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

On the 6th day of June, 1912, this Commission entered its order approving Warehouse Tariff, C. R. C. No. 1, and thereafter on the applica-

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tion of patrons of these warehouses several extensions of the effective date of this order were made and on July 5, 1912, A. S. Ferguson and others filed an application for a rehearing, which was heard on the 11th day of September, 1912, and on October 3, 1912, this Commission filed its supplemental opinion, wherein it established certain of the rates of Warehouse Tariff, C. R. C. No. 1 and established rates in lieu of other of the rates set out therein and made certain changes in the rules that theretofore had been established.

On October 10th, the applicants herein filed a petition for a rehearing of the supplemental order and the effective date thereof has been continued from time to time until the present date. As to many of the rates and rules, there is no controversy, and as to those under controversy, the warehousemen and their patrons have now reached an agreement and have presented to this Commission a schedule of rates and a set of rules satisfactory to both, and after consideration thereof, and having in mind the practical impossibility of determining this question finally, except by experimental rates, I am of the opinion that we should approve the adjustment made by the parties hereto.

No consistent scale of rates has been in effect in any of the warehouses involved and such being the case, it is impossible to tell in advance what effect a changed system of rates and rules will have. However, I deem the present arrangement the best possible solution for the time being.

Atkins and Kroll intervened in behalf of certain contracts which they held with one of the warehouse applicants herein. No decision is made with reference to contracts at this time, the whole matter of contracts made by public utilities for service prior to the effective date of the Public Utilities Act being now before this Commission. Pending a decision of the question, the warehousemen here involved will, of course, respect all contracts which they have heretofore entered into, but as to the future, they will make no contracts that are not in accord with the provisions of this tariff.

I recommend the following order:

ORDER.

The petitioners herein having filed their applications hereinabove referred to and a hearing having been held and being fully informed in the premises, the Commission finds as a fact that the rates set out in the tariff attached hereto and made a part hereof and denominated C. R. C. Warehouse Tariff No. 2 are just and reasonable rates and the rules prescribed therein are fair and reasonable rules;

And it is therefore ordered that the rates set out in Warehouse Tariff, C. R. C. No. 2, and the rules included therein, be and the same are hereby established, said rates and rules to apply upon all storage in the warehouses affected, made on storage dates from and after December 2, 1912.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION NO. 386.

IN THE MATTER OF THE APPLICATION OF THE CITY ELECTRIC COMPANY FOR AUTHORITY TO ISSUE AND PLEDGE AS COLLATERAL SECURITY EIGHT HUNDRED AND THIRTY-THREE OF ITS BONDS, EACH OF THE DENOMINATION OF ONE THOUSAND DOLLARS, AGGREGATING EIGHT HUNDRED AND THIRTY-THREE THOUSAND DOLLARS FACE VALUE FIRST MORTGAGE FIVE PER CENT THIRTY-YEAR SINKING FUND GOLD BONDS.

Application No. 342.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Application having been made to the Railroad Commission of the State of California by City Electric Company for an order authorizing said company to issue and pledge as collateral 833 of its first mortgage 5 per cent thirty-year sinking fund gold bonds due and payable July 1, 1937, of the denomination of $1,000 each, said bonds being numbered 1701 to 1900, both numbers inclusive, and 1942 to 2574, both numbers inclusive, said bonds to be issued and placed as collateral and to be reissued and pledged as collateral from time to time as the same shall be returned to the treasury of applicant, as security for moneys borrowed to reimburse applicant for moneys actually expended from income of applicant during the past five years in paying for the construction, extension, and improvement of the plant of applicant, and a public hearing having been duly held upon this application, and the Commission being of the opinion that the purposes for which the moneys procured from the pledge of the bonds herein authorized are to be used are not in whole, or in part, reasonably chargeable to operating expenses or to income, and the Commission being of the opinion that the issue of the bonds herein authorized is reasonably necessary to carry out the purposes of applicant,

It is hereby ordered that the City Electric Company be, and it is hereby, authorized to issue and pledge as collateral security 833 of its

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first mortgage 5 per cent thirty-year sinking fund gold bonds due and payable July 1, 1937, of the denomination of $1,000 each, and numbered as aforesaid upon the following conditions and not otherwise, to wit:

1. The bonds herein authorized to be issued and pledged as collateral shall be pledged so as to net applicant not less than 50 per cent of the face value thereof.

2. The moneys obtained from the pledge of the bonds herein authorized shall be used to reimburse applicant for moneys actually expended from income of applicant during the past five years in paying for the construction, extension, and improvement of the plant of applicant.

3. The bonds herein authorized to be issued and pledged as collateral may, upon being returned to the treasury of applicant, be reissued and pledged as collateral from time to time as applicant may desire until January 1, 1914.

4. Applicant herein shall keep true and accurate accounts showing the disposition of the bonds herein authorized to be issued and pledged as collateral and of the receipt and disposition of the moneys procured from the pledge of said bonds and shall, on or about the twenty-fifth day of each month, make verified reports to this Commission, stating in detail the disposition of the bonds herein authorized to be pledged as collateral and of the receipt and disposition of the moneys procured by the pledge of said bonds, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

5. The authority herein granted applicant to issue and pledge bonds as collateral shall apply only to bonds issued and pledged as collateral prior to January 1, 1914.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION NO. 387.

IN THE MATTER OF THE APPLICATION OF NORTHERN CALIFORNIA POWER COMPANY, CONSOLIDATED, FOR AN ORDER AUTHORIZING AN INCREASE IN RATES FOR ELECTRIC POWER IN THE UNINCORPORATED TOWNS OF ANDERSON AND COTTONWOOD, SHASTA COUNTY, AND IN THE UNINCORPORATED TERRITORY SURROUNDING THE INCORPORATED TOWNS OF KENNET, REDDING, RED BLUFF AND CORNING.

Application No. 62.

Decided December 30, 1912.

Specific adjustments of rates ordered upon general principles announced in the opinion formerly presented in this matter and after supplemental investigation.

D. G. Reid, for applicant.

E. L. Randall, Marshall De Motte, and *F. C. Beresford,* for Corning Chamber of Commerce.

W. P. Johnson, for Red Bluff Chamber of Commerce.

REPORT OF THE COMMISSION.

ESHLEMAN and GORDON, *Commissioners.*

This case was decided on the 13th day of July, 1912, and subsequently thereto various patrons of the applicant asked for and were granted a rehearing, since which time a very careful analysis of the financial affairs of the applicant has been made by the rate and auditing departments of this Commission, and on the 28th day of December, 1912, testimony was taken at Red Bluff. As was said in the decision on the original application, it appears without question that a readjustment of the rates of the applicant must be made, but just what readjustment is proper was a matter which did not then clearly appear. We feel that with the very careful study of the books of this company, we are much better prepared to recommend a suitable adjustment than was the case when the matter was before us originally. We have indicated to the applicant that we desire the adjustment herein ordered for the territory in question to apply as well to the entire field of its operation. To the general principles announced in the former opinion we still adhere.

We recommend the following order:

ORDER.

Northern California Power Company, Consolidated, having applied to this Commission for an order authorizing an increase in its rates for

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electric power and a decision having heretofore been rendered and a rehearing granted thereon, and a hearing having been held on the 28th day of December, 1912, and being fully informed in the premises,

The Commission finds as a fact that the rates of charges set out in the schedules attached hereto, and marked "Exhibit I" and made a part hereof for the various classes of service, are just and reasonable rates to be charged by the said applicant, and

It is hereby ordered that the rates of charges set out in the schedule attached hereto be and the same are established as just and reasonable rates to be charged by the said applicant to its patrons within the State of California.

And it is further ordered that said rates be made effective on or before the 10th day of January, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1912.

EXHIBIT "I."

GENERAL LIGHTING RATE.

Applicable to all Domestic, Commercial and other Lighting not otherwise specifically classified.

C. R. C. Classification: Service, 1121; Rate, 0021; Serial No. 120912-1.

First	20 kilowatt hour per month	7¢ per K. W. H.
Next	80 kilowatt hour per month	6¢ per K. W. H.
Next	400 kilowatt hour per month	5¢ per K. W. H.
Next	4500 kilowatt hour per month	4¢ per K. W. H.
Over	5000 kilowatt hour per month	3¢ per K. W. H.

Minimum bill: $1.00 per month per meter.

FLAT RATES.

Effective only in the towns of Coram, De La Mar, Ingot, Iron Mountain, Keswick, Manton, Millville, Old Diggings and Shasta and immediate vicinity.

Class No. 1.

RESIDENCE LIGHTING.

C. R. C. Classification: Service, 1111; Rate, 0200; Serial No. 121112-1.

First three lamps	$1.00 per month.
Over three lamps	25¢ per lamp per month.

Class No. 2.

GENERAL COMMERCIAL LIGHTING.

C. R. C. Classification: Service, 1111; Rate, 0200; Serial No. 121112-1.

First three lamps	$1.50 per month
Over three lamps	50¢ per lamp per month.

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Class No. 3.

ALL NIGHT RATE.

C. R. C. Classification: Service, 1111; Rate, 0200; Serial No. 121112-3.

First two lamps.....$1.50 per month.
Over two lamps.....60¢ per lamp per month.

All night lights used in connection with Class No. 1 and Class No. 2 rates will be charged for at the rate of 60¢ per month.

Any lighting unit rated at 60 watts (per hour) or less shall be considered as *one lamp* for the purpose of determining the flat rate applicable thereto.

Rates applying to lighting units rated in excess of 60 watts (per hour) shall be determined as follows:

Over 60 watts but not exceeding 120 watts—2 lamps.
Over 120 watts but not exceeding 180 watts—3 lamps.
Over 180 watts but not exceeding 240 watts—4 lamps.
Over 240 watts but not exceeding 300 watts—5 lamps.
Over 300 watts in same proportion.

ELECTRIC COOKING AND HEATING RATE.

Applicable to Electric Energy utilized for General Cooking and Heating purposes.

C. R. C. Classification: Service, 1151; Rate, 0021; Serial No. 121012-1.

First 100 kilowatt hour per month..... 3¢ per K. W. H.
Next 100 kilowatt hour per month..... 2½¢ per K. W. H.
Next 100 kilowatt hour per month..... 2¢ per K. W. H.
Over 300 kilowatt hour per month..... 1½¢ per K. W. H.

Minimum bill: $1.00 per month per meter.

EMPLOYEES' RATES.

Class No. 1.

Applicable to Company Employees connected with the Distributing Department.

C. R. C. Classification: Service, 1016; Rate, 0020; Serial No. 121012-2.

First 30 kilowatt hour per month..... free.
Next 300 kilowatt hour per month..... 2¢ per K. W. H.
Over 330 kilowatt hour per month..... 1¢ per K. W. H.

No minimum bill.

Class No. 2.

Applicable to Company Employees connected with the Electric Generating Plants.

C. R. C. Classification: Service, 4016; Rate, 0000; Serial No. 121012-3.

Free service.

YEARLY POWER RATES.

Class No. 1.

Applicable to Small Miscellaneous Power.

C. R. C. Classification: Service, 1361; Rate, 0311; Serial No. 120612-1.

Demand charge, $1.00 per horsepower per month plus energy charge, 1½ cents per kilowatt hour.

Minimum demand charge: $1.00 per month.

YEARLY POWER RATES.

Class No. 2.

Applicable to Small Industrial Power.

C. R. C. Classification: Service, 1361; Rate, 0311; Serial No. 120612-2.

Demand charge, $1.00 per horsepower per month plus energy charge, one (1) cent per kilowatt hour.

Minimum demand charge: $10.00 per month.

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YEARLY POWER RATES.

Class No. 3.

Applicable to General Industrial Power.

C. R. C. Classification: Service, 1361; Rate, 0311; Serial No. 120612-3.

Demand charge, $1.00 per horsepower per month plus energy charge, ¾ cent per kilowatt hour.

Minimum demand charge: $100.00 per month.

YEARLY POWER RATES.

Class No. 4.

Applicable to Large Industrial and Wholesale Power not otherwise classified.

C. R. C. Classification: Service, 1371; Rate, 0311; Serial No. 120612-4.

Demand charge, $1.00 per kilowatt per month plus energy charge, ¾ cent per kilowatt hour.

Minimum demand charge: $250.00 per month.

SEASONAL POWER RATES.

Applicable to Small Rural Power.

Class "A."

NORMAL OR IRRIGATING SEASON OF SIX CONSECUTIVE MONTHS.

C. R. C. Classification: Service, 1381; Rate, 0112; Serial No. 120312-1.

Demand charge, $1.00 per horsepower per month plus energy charge, one (1) cent per kilowatt hour.

Minimum bill: $2.50 per month for not less than six (6) consecutive months each year.

Class "B."

SHORT SEASON OF THREE CONSECUTIVE MONTHS.

C. R. C. Classification: Service, 1381; Rate, 0112; Serial No. 120312-2.

Demand charge, $1.50 per horsepower per month plus energy charge, one (1) cent per kilowatt hour.

Minimum bill: $5.00 per month for not less than three (3) consecutive months each year.

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DECISION NO. 388.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT AN UNDERGRADE CROSSING UNDER THE TRACK OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, NEAR THE SOUTH LINE OF SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 329.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company, a corporation, having on December 23, 1912, filed with the Commission an application for permission to construct an undergrade crossing of its main line track with the track of The Atchison, Topeka and Santa Fe Railway Company, near the south line of San Bernardino County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has executed a contract relative to the construction and maintenance hereafter of said crossing, the terms of which are agreeable to The Atchison, Topeka and Santa Fe Railway Company and will be executed by said company, as shown by certain correspondence attached to the application, and it further appearing that it is reasonable and practicable to avoid a grade crossing and construct an undergrade crossing of said railways and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Pacific Electric Railway Company to construct an undergrade crossing of its track under the track of The Atchison, Topeka and Santa Fe Railway Company at a point on its line of railway between the cities of Highgrove, Riverside County, and San Bernardino, San Bernardino County, California, about thirty-two hundred (3200) feet north of the Riverside-San Bernardino County line, as shown by the maps and profiles attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, including the necessary overhead bridge and piers or abutments therefor shall be borne by applicant. The cost hereafter of maintaining the crossing, including said overhead bridge and its piers or abutments shall be borne by applicant, except that the cost of maintaining the deck of said bridge shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

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(2) The side and overhead clearances of said bridge relating to the track of applicant shall be as prescribed in General Order No. 26 of this Commission.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION NO. 389.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS MAIN LINE TRACK AT GRADE ACROSS NINE STREETS OR PUBLIC HIGHWAYS, INTERSECTING MENDOCINO STREET, NEAR THE CITY OF PASADENA, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 331.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company, a corporation, having on December 23, 1912, filed with the Commission an application for permission to construct its main line track at grade across nine (9) streets, or public highways, intersecting Mendocino street, near the city of Pasadena, Los Angeles County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit from the board of supervisors of said county to construct said track at grade, and it further appearing that it is not reasonable nor practicable to avoid grade crossings with said streets or public highways and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Pacific Electric Railway Company to construct its track at grade across the following streets, or public highways, in Los Angeles County, California, said track beginning at the intersection of the present track of said Company on Lake avenue and extending in an easterly direction on Mendocino street, viz:

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Crossing No. 1. Lake avenue, on the east side of the present track of said Company.
Crossing No. 2. Maiden lane, at engineer's station 8+77.
Crossing No. 3. Mar Vista avenue, at engineer's station 12+52.
Crossing No. 4. Lime street, at engineer's station 17+11.
Crossing No. 5. Highland avenue, at engineer's station 21+27.
Crossing No. 6. Holliston avenue, at engineer's station 25+00.
Crossing No. 7. Braeburn road, at engineer's station 33+17.
Crossing No. 8. Porter avenue, at engineer's station 43+05.
Crossing No. 9. Westwood lane, at engineer's station 50+23.

All of the above as shown by the map and profile attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings together with the cost of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guardrails for said crossings, and shall ballast same to a depth of not less than six (6) inches, with first-class stone or gravel ballast. Said crossings shall be of a length sufficient to meet the demands of the road traffic, in no case less than twenty-four (24) feet, with grades of approach not exceeding six (6) per cent.

(3) The crossings shall be provided with first-class, standard, highway crossing signs, marked with appropriate black letters not less than six (6) inches in height upon a white background.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 390.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE ACROSS THREE PUBLIC HIGHWAYS IN THE TOWN OF HERMOSILLO, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 333.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company, a corporation, having on December 23, 1912, filed with the Commission an application for permission to construct its track at grade across three (3) streets or public highways in the town of Hermosillo, Los Angeles County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchise or permit for the construction of said crossings at grade from the county supervisor and road commissioner of the district in which same are located, and it further appearing that it is not reasonable nor practicable to avoid grade crossings with said highways and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Pacific Electric Railway Company to construct its track at grade across three (3) public highways in the town of Hermosillo, Los Angeles County, California, as follows:

Crossing No. 1. A public highway known as "Alley" at a point about 435 feet east of Vermont avenue of said town of Hermosillo and on the north side of block "B," Griffin and Kitzman subdivision to said town.

Crossing No. 2. A public highway known as Wilmington street at a point about 73 feet east of the east line of Vermont avenue.

Crossing No. 3. A public highway known as Vermont avenue at a point about 395 feet south of Wilmington street.

All of the above as shown by the map attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings together with the cost of their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Said crossings shall be constructed of a length not less than forty-eight (48) feet with grades of approach not exceeding six (6)

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per cent and shall be ballasted with first-class stone or gravel ballast to a depth of not less than six (6) inches and in every way made safe for the passage thereover of vehicles and other road traffic.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912..

DECISION NO. 391.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A PASSING TRACK AT GRADE ACROSS CLEARWATER ROAD, IN THE TOWN OF DOWNEY, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 340.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on December 26, 1912, filed with the Commission an application for permission to construct a passing track at grade across Clearwater road, in the town of Downey, Los Angeles County, California, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that it is not reasonable nor practicable to avoid a grade crossing with said public road, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Southern Pacific Company to construct a passing track at grade across Clearwater Road, in the town of Downey, Los Angeles County, California, same as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter, in good and first-class condition, for the safe and convenient use of the public, shall be borne by applicant.

(2) Said crossing shall be constructed of a width of not less than

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twenty-four (24) feet, with grade of approach not exceeding six (6) per cent, and shall be ballasted to a depth of not less than six (6) inches with first-class stone or gravel ballast.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION No. 392.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS RAILWAY AT GRADE ACROSS TWENTY-EIGHT PUBLIC HIGHWAYS AND UNDERGRADE ACROSS ONE PUBLIC HIGHWAY ON ITS PROPOSED EXTENSION BETWEEN HIGHGROVE AND SAN BERNARDINO, ALL OF SAID CROSSINGS BEING IN SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 332.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company, a corporation, having on December 23, 1912, filed with the Commission an application for permission to construct its line of railway at grade across twenty-eight streets and public highways and an undergrade crossing across one (1) public highway, all of which are located in San Bernardino County, California, on its proposed extension from Highgrove via Colton to the city of San Bernardino in said county, as hereinafter indicated, and it appearing to the Commission that this is not a case in which a public hearing is necessary, that applicant has secured the necessary franchises or permits for the construction of said crossings from the board of supervisors of San Bernardino County, California, and from the board of trustees of the city of Colton in said county, and it further appearing that it is not reasonable nor practicable for applicant to avoid constructing its track at grade across said twenty-nine (29) streets or public highways, except

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as to crossing No. 4, hereinafter mentioned, and that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that Pacific Electric Railway Company be and is hereby authorized to construct its proposed line of railway from the Riverside–San Bernardino County line near Highgrove, Riverside County, California, eastwardly through the city of Colton to the city of San Bernardino, California, at grade, across the following named streets and public highways, except as to crossing No. 4, which shall be an undergrade crossing, viz:

Crossing No. 1. A public highway on the Riverside–San Bernardino County line at engineer's station 10+69.

Crossing No. 2. A public highway marked "County Road" at engineer's station 59+81.

Crossing No. 3. A public highway marked "Palm Street" at engineer's station 72+44.

Crossing No. 4. A public highway marked "Vivienda Avenue" at engineer's station 91+00.

Crossing No. 5. A public highway marked "Road" at engineer's station 127+36.

Crossing No. 6. A public highway marked "Congress Street" at engineer's station 153+94, the south boundary of the city of Colton.

Crossing No. 7. A street in the city of Colton marked "O" street at engineer's station 168+50.

Crossing No. 8. A street in the city of Colton marked "N" street at engineer's station 172+43.

Crossing No. 9. A street in the city of Colton marked "M" street at engineer's station 176+43.

Crossing No. 10. A street in the city of Colton marked "L" street at engineer's station 180+43.

Crossing No. 11. A street in the city of Colton marked "K" street at engineer's station 184+43.

Crossing No. 12. A street in the city of Colton marked "J" street at engineer's station 189+98.

Crossing No. 13. A street in the city of Colton marked "I" street at engineer's station 193+98.

Crossing No. 14. A street in the city of Colton marked "H" street at engineer's station 198+17.

Crossing No. 15. A street in the city of Colton marked "G" street at engineer's station 201+01.

Crossing No. 16. A street in the city of Colton marked "Tenth" street at engineer's station 204+29.

Crossing No. 17. A street in the city of Colton marked "F" street at engineer's station 208+12.

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Crossing No. 18. A street in the city of Colton marked "Eleventh" street at engineer's station 211+97.

Crossing No. 19. A street in the city of Colton marked "E" street at engineer's station 213+25.

Crossing No. 20. A street in the city of Colton marked "C" street at engineer's station 223+52.

Crossing No. 21. A street marked "Mount Vernon" avenue, the east boundary, city of Colton at engineer's station 231+87.

Crossing No. 22. A public highway (unmarked) at engineer's station 247+06.

Crossing No. 23. A public highway marked "Coburn" street at engineer's station 259+19.

Crossing No. 24. A public highway marked "Travelled Road" at engineer's station 264+26.

Crossing No. 25. A public highway marked "Lucinda" avenue at engineer's station 279+33.

Crossing No. 26. A public highway marked "Jefferson" street at engineer's station 289+10.

Crossing No. 27. A public highway marked "Harold" street at engineer's station 292+07.

Crossing No. 28. A public highway marked "Adell" street at engineer's station 296+25.

Crossing No. 29. A public highway marked "Mill" street, the south boundary line of the city of San Bernardino, at engineer's station 319+69.

All of the above crossings to be located and constructed as shown by the maps and profiles attached to the application and subject to the following conditions, viz:

(1) The entire expense of constructing the crossings together with their maintenance hereafter in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guard rails for the construction of all grade crossings and shall construct same of a sufficient length to afford a convenient and easy passage of vehicles and other road traffic. The grades of approach to all grade crossings shall not exceed six (6) per cent and such crossings shall be ballasted with first-class gravel or stone ballast to a depth of not less than six (6) inches. For crossing No. 4, applicant shall provide a safe and suitable overhead bridge not less than twenty (20) feet in width.

(3) All of said crossings shall be provided with first-class standard crossing signs marked "Railway Crossing" in black letters not less than six (6) inches in height on a white background.

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(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this 30th day of December, 1912.

DECISION NO. 393.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY AND THE TOWN OF SUISUN CITY FOR AN ORDER DIRECTING THAT GREAT WESTERN POWER COMPANY BE PERMITTED TO USE THE POLES OF PACIFIC GAS AND ELECTRIC COMPANY AND PACIFIC TELEPHONE AND TELEGRAPH COMPANY IN THE TOWN OF SUISUN CITY JOINTLY WITH THE OWNERS OF SAID POLES.

Application No. 328.

Decided December 30, 1912.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Applicants in the above entitled proceeding having on December 30, 1912, made written request to this Commission that the above entitled application be dismissed.

It is hereby ordered that the application in the above entitled proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of December, 1912.

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DECISION No. 394.

IN THE MATTER OF THE APPLICATION OF MIDLAND COUNTIES GAS AND ELECTRIC COMPANY TO PURCHASE CERTAIN SHARES OF THE CAPITAL STOCK OF RUSSEL ROBISON WATER AND ELECTRIC COMPANY; OF THE COALINGA WATER AND ELECTRIC COMPANY TO SELL CERTAIN SHARES OF THE CAPITAL STOCK OF RUSSEL ROBISON WATER AND ELECTRIC COMPANY; AND OF RUSSEL ROBISON WATER AND ELECTRIC COMPANY AND COALINGA WATER AND ELECTRIC COMPANY FOR THE TRANSFER OF CERTAIN REAL ESTATE IN THE TOWN OF ARROYO GRANDE FROM COALINGA WATER AND ELECTRIC COMPANY TO RUSSEL ROBISON WATER AND ELECTRIC COMPANY.

Application No. 299.

Decided December 31, 1912.

Sutherland & Barbour, for applicants.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL OPINION AND ORDER.

At the time the original application in this matter was heard the approval of the Commission was asked to the transfer of a certain franchise from Russel Robison to the Russel Robison Water and Electric Company.

At that time applicant had not secured the assignment of Mr. Russel Robison to the Russel Robison Water and Electric Company, hence the approval of such transfer could not be incorporated in the original opinion and order.

Testimony covering the entire matter, however, was heard, and applicant was informed that upon receipt by this Commission of a certified copy of the franchise together with original assignment an *ex parte* order would be entered by the Commission approving transfer of said franchise.

Such certified copy of the franchise and original assignment having now been received by the Commission, I recommend that the transfer of the franchise be approved and submit the following order:

ORDER.

Whereas the application of the Midland Counties Gas and Electric Company to purchase certain shares of the capital stock of the Russel

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Robison Water and Electric Company and of the Coalinga Water and Electric Company to sell certain shares of the capital stock of Russel Robison Water and Electric Company and of Russel Robison Water and Electric Company and Coalinga Water and Electric Company to transfer certain real estate in the town of Arroyo Grande to Russel Robison Water and Electric Company also comprehended a request for permission to transfer certain franchise from Russel Robison to Russel Robison Water and Electric Company;

And whereas applicant at that time had not secured an assignment from Russel Robison;

And whereas at the hearing of Application No. 299, testimony covering the transfer of the franchise from Russel Robison to the Russel Robison Water and Electric Company was taken and the Commission having found that such transfer from Russel Robison to the Russel Robison Water and Electric Company of all his rights in and under a certain franchise to construct, erect, and maintain poles for electric wires along certain streets and highways in the county of San Luis Obispo, said franchise having been granted to said Russel Robison by the board of supervisors of San Luis Obispo on the 3d day of July, 1906, should be approved,

It is hereby ordered that said transfer of said franchise from Russel Robison to Russel Robison Water and Electric Company be and it is hereby approved.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 31st day of December, 1912.

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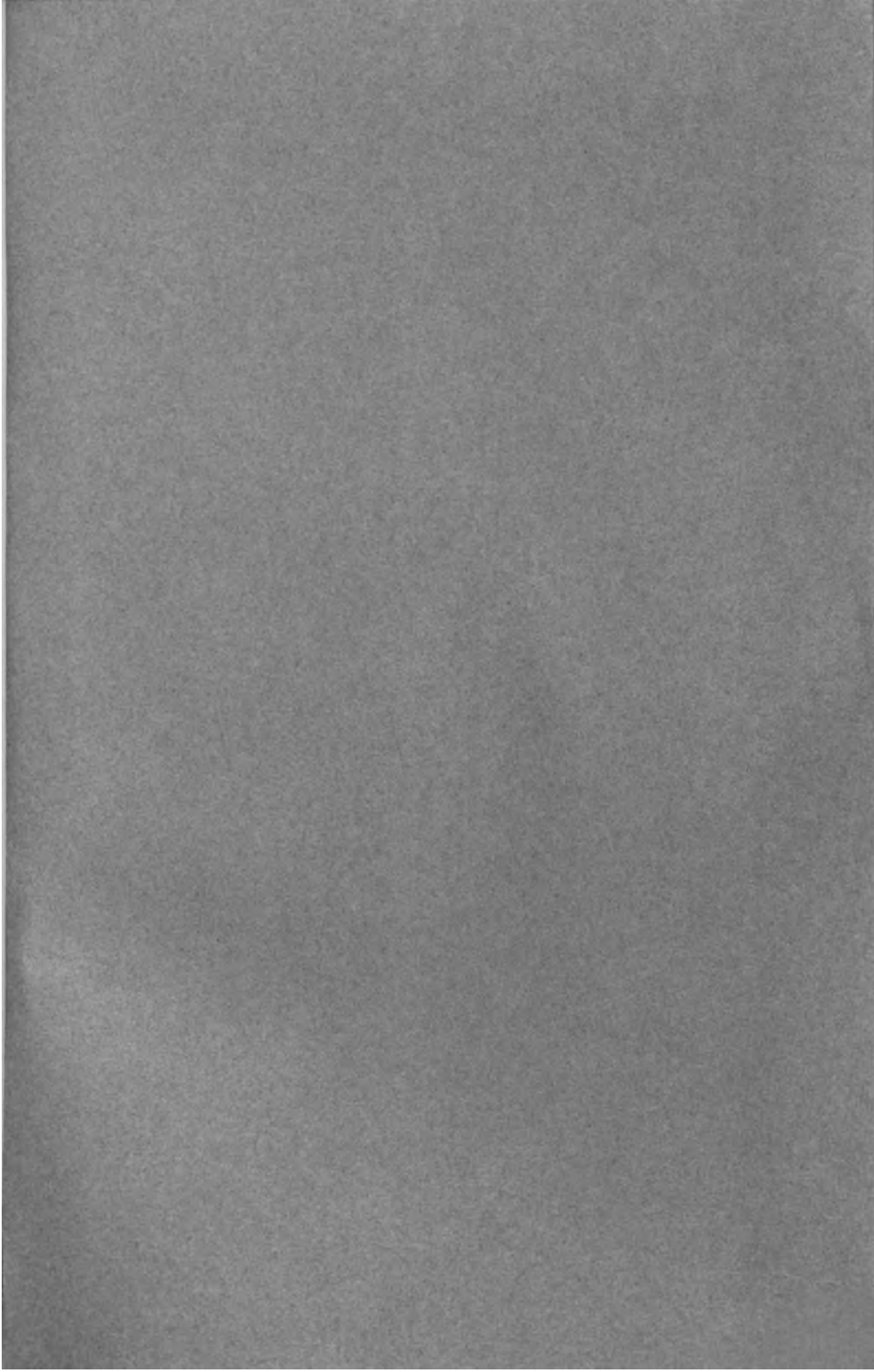

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